

FILED

MAR 03 2017

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS
PETITIONER**

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ZACHARY STRINGER

VERSUS

CAUSE NO. *2017-m-299*

STATE OF MISSISSIPPI

RESPONDENT

MOTION FOR LEAVE TO PROCEED IN THE TRIAL COURT

ORIGINAL

Comes now Zachary Stringer, by and through his counsel, Thomas M. Fortner, and petitions this honorable Court for relief from his conviction and sentence, pursuant but not limited to Miss. Code Ann. §99-39-1 *et. seq.*, and in support of which would show the following:

Zachary Stringer is presently out of prison having served five (5) years of his ten (10) year sentence in the custody of the Mississippi Department of Corrections in Parchman, MS. He is now twenty (20) years old and is currently under earned release supervision after which he will be on post-release supervision for five (5) years. Mr. Stringer spent the prime years of his youth in prison for a crime he did not commit.

Zachary Stringer was convicted of manslaughter on February 7, 2013 in Jackson County, Mississippi when he was fifteen (15) years old for the shooting of his younger brother. He was sentenced by the honorable Prentiss Greene Harrell on February 28, 2013 to a term of twenty (20) years in the custody of the Mississippi Department of Corrections ("MDOC"), with ten (10) years to be served and the remaining ten (10) years of said sentence to be served under post-release supervision with a five (5) years supervision period.

The Mississippi Supreme Court affirmed Mr. Stringer's conviction and sentence on February 13, 2014 and a mandate was issued on March 6, 2014. Mr. Stringer now files this *Motion for Leave to Proceed in the Trial Court* and the accompanying *Motion to Vacate*

MOTION#

2017,

839

Judgment and Sentence pursuant to Miss. Code Ann. §99-39-1 *et. seq.* He has filed no actions in state or federal court to challenge his sentence, as he does in the accompanying motion to vacate.

In the accompanying motion, Zachary Stringer will show, based upon Miss. Code Ann. §99-39-5(1)(e), specifically, that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction and sentence in the interest of justice.

In the accompanying motion and exhibits, Mr. Stringer shows that manufacturing defects associated with the Remington Model 700 X-Mark Pro "XMP" rifle can cause the rifle to fire without a trigger pull. Remington made and sold roughly 1.3 million Model 700 XMP rifles between 2006 and May of 2014, including the rifle which was involved in the present case. Furthermore, as a result of customer complaints and subsequent investigation, on or about April 11, 2014, Remington recalled all 1.3 million XMP rifles in order to repair and replace the trigger mechanisms.

Attached is a copy of Remington's Product Safety Warning and Recall Notice in which Remington stated that "some Model 700 and Model Seven rifles with XMP triggers could, under certain circumstances, **unintentionally discharge.**"

Mr. Stringer received one of the recalled Model 700 XMP rifles as a Christmas gift in 2008. Mr. Stringer nor his family were aware of the potentially dangerous and defective XMP fire control system that could cause the rifle to fire without the trigger being pulled. Mr. Stringer, who was only fifteen (15) years old at the time of this incident, always maintained that the shooting of his younger brother was unintentional and that he did not have his finger on the trigger when the rifle discharged.


This newly discovered evidence concerning the Remington Model 700 XMP rifle was never submitted at the trial of Mr. Stringer. Mr. Stringer did not discover the evidence until after

the trial, and the evidence could not have been discovered before trial by exercise of due diligence. The defense, the State of Mississippi, nor the Mississippi Crime Lab were aware of the fact that this particular rifle model had been recalled due to unintentional discharges.

This new evidence significantly corroborates Mr. Stringer's explanation of what happened. The new evidence raises many significant questions about the Remington Model 700 XMP rifle, and the absence of this evidence at the initial trial severely prejudiced Mr. Stringer's right to a fair trial. Based on the newly discovered evidence presented in the accompanying Motion to Vacate, Mr. Stringer is entitled to have his conviction set aside and be granted a new trial.

Wherefore, premises considered, Mr. Stringer asks that this Court review this Motion, his Motion to Vacate and its accompanying exhibits, as well as the entire record of this case, and grant the relief requested in the motion. In the alternative, Mr. Stringer asks that this Court permit the filing of the Motion to Vacate in the Circuit Court of Marion County and order that a hearing be held on his claims pursuant to the procedures set out in Miss. Code Ann. §99-39-1 *et seq.*

Respectfully submitted, this the 3rd day of March, 2017



Thomas M. Fortner

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CERTIFICATE OF SERVICE

I, Thomas M. Fortner, do hereby certify that I have this date caused to be mailed, postage prepaid, a true and correct copy of the above and foregoing *Motion for Leave to Proceed in the Trial Court* and the accompanying *Motion to Vacate Judgment and Sentence Filed Pursuant to the Mississippi Uniform Post-Conviction Relief Act* to Honorable Hal Kittrell, District Attorney, at 500 Courthouse Square Suite 3, Columbia, Mississippi 39429 and to Honorable Jim Hood, Attorney General, at 550 High Street, Ste. 1200, Jackson, Mississippi 39201.

This 3rd day of March, 2017.


Thomas M. Fortner

IN THE CIRCUIT COURT OF MARION COUNTY, MISSISSIPPI

ZACHARY STRINGER

PETITIONER

VERSUS

CAUSE NO.

STATE OF MISSISSIPPI

RESPONDENT

**Motion to Vacate Judgment and Sentence Filed Pursuant to the
Mississippi Uniform Post-Conviction Collateral Relief Act**

Comes now Zachary Stringer, by and through his counsel, Thomas M. Fortner, and petitions this honorable Court for relief from his conviction and sentence, pursuant but not limited to Miss. Code Ann. 99-39-1 *et. seq.*, and in support of which would show the following:

JURISDICTION

This Court has jurisdiction over this matter pursuant to Miss. Code Ann. § 99-39-5(2). Mr. Stringer's conviction was affirmed by the Mississippi Supreme Court on February 13, 2014, issuing its mandate on March 6, 2014. (Exhibit 1, Mandate). This motion is filed within the three-year statute of limitations controlling Post-Conviction Collateral Relief proceedings as outlined in Miss. Code Ann. §99-39-5(2), and therefore, the Court has jurisdiction to review it and the accompanying Motion for Leave to Proceed in the Trial Court.

IDENTITY OF PROCEEDINGS

On February 23, 2012, Zachary Stringer was indicted for murder by the Grand Jury in Marion County, Mississippi. (Exhibit 2, Indictment). Venue was moved to Jackson County, Mississippi for trial, and a jury found him guilty of a lesser-included offense of manslaughter on February 7, 2013. (Exhibit 3, Jury Verdict). He was sentenced by the honorable Prentiss Greene Harrell on February 28, 2013 to a term of twenty (20) years in the custody of the Mississippi Department of Corrections ("MDOC"), with ten (10) years to be served and the remaining ten (10) years of said sentence to be served under post-release supervision with a five (5) years supervision period. (Exhibit 4, Order of

Conviction). Stringer was also fined \$10,000. *Id.*

Thereafter Mr. Stringer's counsel filed a *Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, a New Trial* on March 5, 2013. (Exhibit 5, Motion for Judgment Notwithstanding the Verdict, or In the Alternative, A New Trial). The motion was denied and an appeal was perfected and filed by the Office of Indigent Appeals on August 27, 2013. In his appeal, Mr. Stringer's counsel cited two issues: (1) whether the trial court erred by allowing multiple gruesome photographs of the victim and the crime scene into evidence; and (2) whether the trial court erred in denying Mr. Stringer's motion for judgment notwithstanding the verdict (JNOV). *See Stringer v. State*, 131 So.3d 1182 (Miss. 2014).

The Mississippi Supreme Court affirmed Mr. Stringer's conviction and sentence on February 13, 2014 and a mandate was issued on March 6, 2014. (Exhibit 1). Mr. Stringer now files this *Motion to Vacate Judgment and Sentence* pursuant to Miss. Code Ann. §99-39-1 *et. seq.*

CONCISE STATEMENT OF CLAIM

The relief requested herein is based upon Miss. Code Ann. 99-39-5(1)(e), specifically, that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction and sentence in the interest of justice.

The weapon in the instant manslaughter case was a Remington Model 700 rifle. Remington manufactures, markets and distributes the Remington Model 700 bolt action rifle, including the rifle's bolt action, the fire control system and the safety switch. The Remington Model 700 Rifle's fire control system has proven to be a continuing source of liability for Remington. (Exhibit 6, Affidavit of Robert Chaffin). To date, Remington has received over 10,000 customer complaints and paid out roughly \$20 million in settlements since 1993 pertaining to unintended discharges for Models 700 and 710 containing the "Walker" fire control. *Id.* Remington continued to produce

rifles containing the dangerous “Walker” fire control until the mid-2000s when it developed and began incorporating a new fire control system, the X-Mark Pro, or “XMP.” *Id.* The Model 700 XMP rifles were not any safer due to a negligent manufacturing defect. *Id.* Specifically, all Model 700 XMP rifles manufactured between 2006 and May 2014 were assembled in a manner that can cause the rifle to fire without the trigger being pulled. *Id.*

Mr. Stringer received a Model 700 XMP rifle as a Christmas gift in 2008. (Exhibit 7, Affidavit of Roger Dale Stringer). Mr. Stringer nor his family were aware of the potentially dangerous and defective XMP fire control system that could cause the rifle to fire without the trigger being pulled. *Id.* On June 11, 2011 there was an incident wherein Zachary’s younger brother, Justin, who was eleven (11) years old, was shot and killed by a Remington Model 700 rifle being held by Zachary. Over the years, Mr. Stringer, who was fifteen (15) years old at the time, told his parents and officers that the shooting was unintentional and that he did not have his finger on the trigger when the gun discharged. (Exhibit 7 and Exhibit 8, Statement of Specific Facts Within Personal Knowledge of Petitioner). Mr. Stringer was indicted for murder. (Exhibit 2). Neither the State of Mississippi, the defense, nor the Mississippi Crime Lab were aware of the fact that this particular rifle model is the subject of thousands of lawsuits due to accidental discharges caused by the defective XMP fire control system installed in the rifles. (Exhibit 6 and Exhibit 9, Affidavit of Richard Barber). This evidence was never submitted at the trial of Mr. Stringer. Had this new evidence been available and presented at trial, Mr. Stringer would not have been convicted of the charge of manslaughter. Because of this newly discovered evidence, Mr. Stringer is entitled to have his conviction set aside and should be granted a new trial.

**STATEMENT OF SPECIFIC FACTS WITHIN PERSONAL KNOWLEDGE OF
PETITIONER**

A statement, sworn to by Zachary Stringer, is attached to this Motion as Exhibit 8, and the facts contained in his statement are incorporated into this Motion.

**STATEMENT OF SPECIFIC FACTS NOT WITHIN PERSONAL KNOWLEDGE OF
PETITIONER**

The facts which are not within the personal knowledge of the Petitioner and which will be proven if the trial court permits an evidentiary hearing are those set out in Exhibits 6, 7, and 9, which are attached hereto and are incorporated by reference throughout the arguments set forth in this Motion.

CONSTITUTIONAL GROUNDS SUPPORTING CLAIM FOR RELIEF

Mr. Stringer's claims are grounded in violations of his rights as protected by the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution as well as Article 3, Sections 14, 26 and 28 of the Mississippi Constitution.

REQUEST FOR HEARING

Mr. Stringer respectfully requests that this Court set a hearing on the Motion at a time convenient to all parties so that Mr. Stringer can present testimonial and documentary evidence to further support the allegations of this Motion. The Mississippi Supreme Court has held that a PCR movant is entitled to an evidentiary hearing "unless it appears beyond doubt that [he] can prove no set of facts in support of his claim that would entitle him to relief." *Robertson v. State*, 669 So.2d 11 (Miss. 1996); *Harveston v. State*, 597 So.2d 641 (Miss. 1972). Here, Mr. Stringer has presented the Court with affidavits, exhibits and arguments that clearly surpass his duty to present the Court with sufficient facts to merit a hearing.

Additionally Mr. Stringer's counsel also asks that if this Court does not grant him a hearing and denies relief based on this pleading alone that the Court direct the Marion County Circuit Clerk to timely notify Plaintiff's counsel of such decision so that counsel can perfect an appeal within the applicable time limits.

ARGUMENT

Issue: Newly discovered evidence since Stringer's trial provides substantial support for Stringer's explanation of events and Stringer is entitled to have his conviction set aside and be given a new trial

"A petitioner seeking post-conviction relief based on new evidence must prove that the new evidence has been discovered since the end of trial, and such evidence could not have been discovered through due diligence before the beginning of the trial." *Bell v. State*, 2 So.3d 747 (2009). Further, the Mississippi Court of Appeals has stated, "[i]n order to warrant granting a new trial because of newly discovered evidence, it must be shown that the evidence (1) will probably change the result if a new trial is granted, (2) has been discovered since the trial, (3) could not have been discovered before the trial by the exercise of due diligence, (4) is material to the issue, and (5) is not merely cumulative, or impeaching." *Hunt v. State*, 877 So.2d 503 (2004) citing *Moore v. State*, 508 So.2d 666, 668 (Miss.1987).

In *Hunt v. State*, the defendant sought leave from the Mississippi Supreme Court to file a motion for post-conviction relief based on newly discovered evidence because the Court of Appeals had affirmed defendant's conviction on direct appeal (before the new evidence had been discovered). *Hunt v. State*, 877 So.2d 503 (2004). The Mississippi Supreme Court granted defendant's leave and defendant filed a motion for post-conviction relief based on newly discovered evidence. *Id.* The trial court denied defendant's motion for post-conviction relief and the Mississippi Court of Appeals reversed the trial court's denial of post-conviction relief after

finding that the new evidence “in significant ways corroborate[d] [defendant’s] explanation of what happened” and that “the new evidence raise[d] too many significant questions about whether a mistake was made for [the Court] to permit this conviction to stand.”

Similarly, Mr. Stringer is now seeking to file a motion for post-conviction relief based on newly discovered evidence which was discovered after having his conviction affirmed on direct appeal by the Mississippi Supreme Court. Like *Hunt*, Mr. Stringer did not discover the evidence until after the trial, and the evidence could not have been discovered before trial by exercise of due diligence. Further, Mr. Stringer’s new evidence will most likely change the result if a new trial is granted, is material to the issue, and is not merely cumulative or impeaching.

1. New evidence has been discovered since trial.

In his attached affidavit, attorney Robert Chaffin explains the manufacturing defects associated with the Remington Model 700 XMP rifle which he discovered after handling more than 20 products liability cases involving Remington Model 700 rifles that fired without a trigger pull. (Exhibit 6). Remington made and sold roughly 1.3 million Model 700 XMP rifles between 2006 and May of 2014, including the rifle which was involved in the present case. *Id.* Every one of those rifles was manufactured in a negligent manner that can cause the rifle to fire without the trigger being pulled. *Id.* Specifically, all XMP rifles manufactured between 2006 and May of 2014 were assembled using a technique that required “rolling” the entire length of the “blocker screw” and “engagement screw” in a glue-like substance called “Loctite.” *Id.* During normal operation of the rifle, the blocker screw pushes back against the trigger and “blocks” it from moving forward when the safety is “on.” *Id.* When the safety is switched “off,” the blocker screw pulls away from the trigger so the trigger has room to move forward when it is pulled. *Id.* Remington’s assembly technique resulted in excess Loctite being deposited on the blocker screw and subsequently

transferred to the trigger when the blocker contacts the trigger. (Exhibit 6 photos). James Ronkainen, Remington's chief engineer on the XMP, has given sworn testimony that the excess Loctite found in XMP trigger mechanisms was a mistake in the manufacturing process. (Exhibit 6's Exhibit A). Multiple lab tests by Remington and a multitude of similar incident customer complaints establish that Model 700 XMP rifles exhibiting this defect will fire under a broad range of circumstances **without the trigger being pulled**. (Exhibit 6's Exhibits A and B).

Furthermore, as a result of customer complaints and subsequent investigation, on or about April 11, 2014, Remington recalled all 1.3 million XMP rifles in order to repair and replace the trigger mechanisms. (Exhibit 6 and Exhibit 10, Settlement Agreement between Remington and Ian Pollard). Attached is a copy of Remington's Product Safety Warning and Recall Notice in which Remington stated that "some Model 700 and Model Seven rifles with XMP triggers could, under certain circumstances, unintentionally discharge." (Exhibit 11, Remington Recall Notice). Remington recalled Model 700 and Model Seven rifles with XMP triggers, manufactured from May 1, 2006 to April 9, 2014. *Id.*

As discussed earlier, Mr. Stringer received one of the recalled Model 700 XMP rifles as a Christmas gift in 2008. (Exhibit 7 and Exhibit 8). Mr. Stringer nor his family were aware of the potentially dangerous and defective XMP fire control system that could cause the rifle to fire without the trigger being pulled. *Id.* Mr. Stringer, who was only fifteen (15) years old at the time of this incident, always maintained that the shooting of his younger brother was unintentional and that he did not have his finger on the trigger when the rifle discharged. *Id.* However, Mr. Stringer was indicted for murder and then convicted on a lesser charge of manslaughter involving the death of his little brother. (Exhibit 2 and Exhibit 3). This newly discovered evidence concerning the Remington Model 700 XMP rifle was never submitted at the trial of Mr. Stringer. Mr. Stringer did

not discover the evidence until after the trial, and the evidence could not have been discovered before trial by exercise of due diligence as discussed below. Neither the State of Mississippi, the defense, nor the Mississippi Crime Lab were aware of the fact that this particular rifle model had been recalled due to unintentional discharges. The discovery of this new evidence would more than likely change the result if a new trial is granted. Therefore, Mr. Stringer is entitled to have his conviction set aside and should be granted a new trial.

2. The new evidence will likely change the outcome if a new trial is granted.

The Mississippi Court of Appeals has stated that there are two initial questions about new evidence: “[w]hat if any part of th[e] new evidence would be admissible at trial?” And “would the admissible evidence likely change the result?” *Hunt v. State*, 877 So.2d at 510. The new evidence in this case would be admissible relevant evidence under MRE 401 which states that evidence is relevant if it has any tendency to make a fact of consequence in the case more or less probable. Here, the fact that the Model 700 XMP rifle could fire without the trigger being pulled makes a fact of consequence more probable. In his statement to the police which was admitted against him at his trial, Mr. Stringer maintained that he did not have his hand on the trigger when the gun went off. In his statement, Mr. Stringer explains that he was getting up from the couch after showing his brother his gun and then suddenly “heard a click.” Mr. Stringer further explained, “I had no reaction time between the click and the bang. It was just click and it was immediate.” (Exhibit 12, Transcription of Audio Interview with Zachary Stringer, page 7 lines 14-17).

The new evidence in this case supports the description provided by Mr. Stringer. Mr. Stringer explained that he did not have his finger on the trigger when the gun suddenly went off. In the attached recall notice, it is clear that the Model 700 XMP rifle in this case was subject to a Remington recall due to a negligent manufacturing defect that causes the rifle to “**unintentionally**

discharge". (Exhibit 11). Therefore, the new evidence presented above would be admissible relevant evidence because it would make Mr. Stringer's version of events more probable.

In deciding whether new evidence would likely alter the outcome in a new trial, the Mississippi Court of Appeals determined that it was "quite a subjective decision," but that the "important matter for [their] purposes is that [the new evidence] corroborates [the defendant's] version [of events]." *Hunt v. State*, 877 So.2d at 513. In *Hunt*, the defendant was convicted of rape. Defendant's new evidence was from a previously unknown witness who testified at his post-conviction relief hearing that the victim had met the defendant at a bar and proceeded to start a conversation with him. *Id.* at 505. The witness's new testimony supported the defendant's version of events "in significant ways" and even revealed a possible motive for fabrication on the part of the victim. *Id.* at 506. The Court found that the evidence at the initial trial was strictly a battle of credibility between defendant and victim and that the new evidence provided "substantial support for [defendant's] explanation of events." *Id.* The Court concluded that "this evidence rises to the level of that which is sufficiently likely to cause a different result as to justify a new trial." *Id.* at 513.

In the present case, the evidence presented at trial concerning the Remington Model 700 rifle consisted of testimony from Lori Beall, a forensic scientist from the Mississippi crime lab who specialized in firearms identification. (Exhibit 13, Trial Transcript, pg. 242, lines 1-7). Ms. Beall testified that she tested the functionality of the rifle in two ways. *Id.* She simply test fired the rifle and then did a three (3) foot drop test once with the safety on and once with the safety off to see if it would discharge accidentally. *Id.* pg. 248-249, lines 2-8. Richard Barber, a nationally recognized authority on Remington rifles, explains in his attached affidavit that Ms. Beall subjected the rifle to drop testing using heights closely approaching what is considered to be

"abusive testing" by a world leader in firearm testing. (Exhibit 9, pg. 5 fn. 3). Ms. Beall further testified that the rifle in question was *not* subject to accidental discharge and that it was in "good working order." (Exhibit 13, pg. 249, lines 25-27).

Ms. Beall then testified that she tested the rifle's firing mechanism by doing a tested trigger pull. (Exhibit 13, pg. 249-250, lines 28-4). Ms. Beall stated that the poundage required to release the firing pin when pulling the trigger on the rifle was greater than five (5) pounds. *Id.* pg. 250, lines 9-17).

The new evidence in this case would clearly contradict the majority of the crime lab technician's testimony in the initial trial. It is clear from the April 2014 Remington recall notice that the rifle in this case was subject to recall because the "XMP triggers could, under certain circumstances, **unintentionally discharge.**" (Exhibit 11). Further, Mr. Barber and Mr. Chaffin's sworn testimony supports the defendant's version of events in that the rifle could fire without the trigger being pulled. (Exhibit 6 and Exhibit 9). As discussed below, much of the information concerning the functionality of the Remington 700 rifle was under seal and could not be discovered by due diligence. Therefore, both the functionality test and the firing mechanism test performed by Ms. Beall were insufficient and the new evidence presented would have altered the testing and functionality of the rifle.

Like *Hunt*, the new evidence in the present case corroborates Mr. Stringer's version of events. The new evidence in this case clearly establishes that the Model 700 XMP rifle was subject to a recall for its manufacturing defects and could accidentally fire without someone pulling the trigger. Like *Hunt*, the "new evidence raises too many significant questions about whether a mistake was made." 877 So.2d at 514. Because this new evidence clearly contradicts the testimony

presented at trial by the crime lab specialist and clearly corroborates Mr. Stringer's version of events, the new evidence would likely alter the outcome in a new trial.

3. The new evidence was discovered since trial and was not earlier discoverable by the exercise of due diligence.

Prior to October 2015, all relevant information related to functional and design deficiencies in the Model 700 rifles have been bound by overly broad protective orders and confidentiality agreements as a pre-condition of production in civil litigation. (Exhibit 9's attachment 1.). Therefore, the new information concerning the manufacturing defect of the Model 700 rifle involved in this case was not available for the defense of Mr. Stringer prior to his conviction in 2013. In fact, Remington's voluntary recall was not announced until on or about April 11, 2014. (Exhibit 10). Mr. Stringer's father was the first family member to hear of this new evidence and that was not until early 2015. (Exhibit 7). In early 2015, another hunter told Roger Stringer about his rifle accidentally firing without his finger on the trigger and this prompted Roger to investigate. *Id.* Roger Stringer then discovered that the rifle he had bought his son in Christmas of 2008 was part of a recall in which Remington stated that XMP triggers could, under certain circumstances, unintentionally discharge. *Id.*

As evidenced in Richard Barber's affidavit, over the course of many years, Barber worked to unseal information involving functional and design deficiencies in Remington rifles. (Exhibit 9). The chain of events that Mr. Barber had to go through as outlined in his affidavit demonstrate the extreme measures Remington has undertaken to ensure this information would be shielded from public inspection. *Id.* Hence, the new evidence could not have been discovered by due diligence before Mr. Stringer's conviction in 2013.

4. The new evidence is material and not merely cumulative or impeaching.

The new evidence in Mr. Stringer's case is material because the prosecution impressed upon the jury that the gun in this case could not possibly fire without the trigger being pulled. (Exhibit 13, pgs. 461-462; lines 28-1).

The prosecutor, in his closing statement said:

**The gun will not shoot unless your finger pushes
the safety and pulls the trigger.**

Id.

The new evidence clearly contradicts this argument. The new evidence clearly establishes that the Model 700 XMP rifle was subject to a recall for its manufacturing defects and could accidentally fire without someone pulling the trigger.

Further, the medical examiner in this case, Dr. Erin Barnhart, testified at Mr. Stringer's trial that she was unable to determine the manner of death in this case because she did not have enough evidence to make that determination. (Exhibit 13, pg. 221 lines 16-19). The prosecution asked Dr. Barnhart what facts she would need to make the determination concerning whether the manner of death was "accidental versus homicide." *Id.* pg. 226 line 13-14. Dr. Barnhart replied:

An accidental death or manner of death with a
gunshot would entail some evidence that the gun had
actually misfired or **fired without the willing effort
of another person.**

Id. pg. 226 lines 20-24.

Richard Barber interviewed Dr. Barnhart last year during the course of his investigation of the Stringer trial and reveals in his attached affidavit that Dr. Barnhart, by her own definition of accident v. homicide, would now conclude the incident an accidental death. (Exhibit 9, pg. 19).

CONCLUSION

The new evidence presented in this brief is clearly material to Mr. Stringer's case. The new evidence significantly corroborates Mr. Stringer's explanation of what happened. The new evidence raises many significant questions about the Remington Model 700 XMP rifle, and the absence of this evidence at the initial trial severely prejudiced Mr. Stringer's right to a fair trial. Based on the newly discovered evidence presented above, Mr. Stringer is entitled to have his conviction set aside and be granted a new trial.

Respectfully submitted, this the 3rd day of March, 2017


Thomas M. Fortner

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CERTIFICATE OF SERVICE

I, Thomas M. Fortner, do hereby certify that I have this date caused to be mailed, postage prepaid, a true and correct copy of the above and foregoing *Motion for Leave to Proceed in the Trial Court* and the accompanying *Motion to Vacate Judgment and Sentence Filed Pursuant to the Mississippi Uniform Post-Conviction Relief Act* to Honorable Hal Kittrell, District Attorney, at 500 Courthouse Square Suit.3, Columbia, Mississippi 39429 and to Honorable Jim Hood, Attorney General, at 550 High Street, Ste. 1200, Jackson, Mississippi 39201.

This 3rd day of March, 2017.


Thomas M. Fortner



**MANDATE
SUPREME COURT OF MISSISSIPPI**

To the Marion County Circuit Court - GREETINGS:

In proceedings held in the Courtroom, Carroll Gartin Justice Building, in the City of Jackson, Mississippi, the Supreme Court of Mississippi entered a judgment as follows:

Supreme Court Case # 2013-KA-00586-SCT
Trial Court Case #K12-0055H

Zachary Stringer a/k/a Zac Stringer v. State of Mississippi

Thursday, 13th day of February, 2014

Conviction of manslaughter and sentence of twenty (20) years in the custody of the Mississippi Department of Corrections with ten (10) years to serve and the remaining ten (10) years to be served under post-release provisions with a five (5) year supervision period, with conditions, Affirmed. Marion County taxed with costs of appeal.

YOU ARE COMMANDED, that execution and further proceedings as may be appropriate forthwith be had consistent with this judgment and the Constitution and Laws of the State of Mississippi.

I, Kathy Gillis, Clerk of the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, certify that the above judgment is a true and correct copy of the original which is authorized by law to be filed and is actually on file in my office under my custody and control.

Witness my signature and the Court's seal on March 6, 2014, A.D.


CLERK



INDICTMENT

STATE OF MISSISSIPPI

CAUSE NUMBER K12-0055H

CHARGE: MURDER


COUNTY OF: MARION

In the Circuit Court in said County
at the October, 2011 Term

THE GRAND JURORS for the State of Mississippi, elected, impaneled, sworn and charged, in and for said County and State aforesaid, in the name and by the authority of the State of Mississippi, upon their oath, present:

That **ZACHARY STRINGER**, on or about the 11th day of June, A. D., 2011 in Marion County, Mississippi did wilfully, unlawfully, feloniously, without authority of law, shoot and kill Justin Stringer, a human being, with a firearm. **ZACHARY STRINGER** did so act with the deliberate design to effect the death of the said Justin Stringer, contrary to and in violation of Section 97-3-19 (a) of the Mississippi Code of Mississippi as amended; against the peace and dignity of the State of Mississippi.


ENDORSED: A TRUE BILL


Assistant District Attorney
Foreman of the Grand JuryFiled and recorded the 23 day of February, 2012.
CLERK

, D. C.

Item: MCSO 2011-11504
STRINGER, Zachary- DOB 03-28-1996 W/M

This is a True Copy


JANETTE NOLAN
CIRCUIT CLERK

D.C.

EXHIBIT

2

FILED
FEB 07 2013

JANETTE NOLAN, CIRCUIT CLERK
BY _____ D.C.

We, the jury, find the defendant
Zachary Stringer, guilty of
Manslaughter of Justin Stringer.

EXHIBIT

3

IN THE CIRCUIT COURT OF MARION COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

ZACHARY STRINGER

FILED
FEB 28 2013
JANETTE NOIAN, CIRCUIT CLERK
BY _____ D.C.

CASE NO. K12-0055H

ORDER OF CONVICTION

INTO OPEN COURT came the District Attorney who prosecutes for the State of Mississippi and came also **ZACHARY STRINGER**, Defendant herein, in his own proper person and represented by counsel, HONORABLE TOM FORTNER, and having heretofore been lawfully arraigned on an indictment returned by the Grand Jury of MARION COUNTY, Mississippi, charging said Defendant with the crime of **MURDER**, and said Defendant entered a plea of not guilty, and the State of Mississippi and the Defendant announced ready for trial, and following a change of venue a lawful jury of twelve (12) jurors was fully empaneled in Jackson County, Mississippi, and said case proceeded to trial on February 4, 2013, and after both the State of Mississippi and the Defendant had rested and after receiving the instructions of the Court and hearing the argument of the State and Defendant, the jury retired to consider its verdict on February 7, 2013, and presently returned into open Court with the following verdict:

"WE, THE JURY, FIND THE DEFENDANT, ZACHARY STRINGER, GUILTY OF MANSLAUGHTER"

Thereupon, the jury was dismissed and the Court set February 25, 2013, as the date for sentencing so as to consider a pre-sentence investigation report.

THEREFORE, upon said verdict of guilty, and after consideration of a pre-sentence investigation report, it is by the Court ORDERED AND ADJUDGED that the said **ZACHARY STRINGER** is hereby sentenced to serve a term of **TWENTY (20) YEARS** in the custody of the Mississippi Department of Corrections, with **TEN (10) YEARS** to be served at the Mississippi



Department of Corrections and the remaining **TEN (10) YEARS** of said sentence to be served under the post-release provisions with a **FIVE (5) YEAR** supervision period, pursuant to Mississippi Code 47-7-34. **DEFENDANT SHALL BE HOUSED AT THE CENTRAL MISSISSIPPI CORRECTIONAL FACILITY (CMCF) IN THE YOUTHFUL OFFENDER UNIT (YOU). DEFENDANT SHALL RECEIVE CREDIT FOR TIME SERVED ON THIS CASE FOR THE FOLLOWING DATES: JUNE 17, 2011 THROUGH OCTOBER 24, 2012 AND FEBRUARY 15, 2013 TO PRESENT DATE. DEFENDANT SHALL OBTAIN A HIGH SCHOOL DIPLOMA OR G.E.D. WHILE HE IS INCARCERATED.**

The Defendant is hereby ordered to pay a fine of \$10,000.00, pursuant to the general fines statute and pay all costs of Court herein. The specific provisions of said sentence are fully set forth below:

Subject to the above condition that the defendant shall be housed in the Youthful Offender Unit ("YOU"), any period of incarceration imposed under said sentence is to be served in the custody of the Mississippi Department of Corrections under the provisions of Mississippi Code Section 47-5-138, as amended, and any portion of said sentence that is served under Post-Release Supervision is to be served under the provisions of Section 47-7-34 of the Mississippi code of 1972, as amended.

The suspension of any portion of said sentence, whether under Post-Release Supervision, probation or otherwise, shall be subject to the following conditions:

Defendant shall:

- (a) Commit no offense against the laws of this or any other state of the United States, or the laws of the United States;
- (b) Avoid injurious or vicious habits and persons and places of disreputable or harmful character;
- (c) Report to the Field Officer as directed;

- (d) Permit the Field Supervisor to visit the Defendant at home or elsewhere;
- (e) Work faithfully at suitable employment so far as possible;
- (f) Remain within a specified area, to-wit: State of Mississippi;
- (g) Support any dependents;
- (h) Possess or consume no alcoholic beverages or mood altering drugs, and possess no firearm or other deadly weapon;
- (i) Pay required fee during each month of probation, by money order, to the Mississippi Department of Corrections;
- (j) Submit, as provided in Section 47-5-603 of the Mississippi Code of 1972, to any type of breath, oral fluids or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or substance prohibited or controlled by any law of the State of Mississippi or the United States, or to tests recommended by his Field Officer;
- (k) Participate in any recognized program available and recommended by his Field Officer;
- (l) Defendant shall his fine and costs of court herein, to be paid at the rate of \$200.00 per month beginning one (1) month after his release from prison.

The violation of any one of the above enumerated conditions shall violate the terms and conditions of the Defendant's Post-Release Supervision and the Court shall have the authority to revoke the Defendant from Post-Release Supervision and remand him back into the custody of the Mississippi Department of Corrections to serve revoked portion of his **TWENTY (20) YEAR** sentence.

IT IS ORDERED AND ADJUDGED that **ZACHARY STRINGER** is hereby remanded into the custody of the Sheriff of MARION COUNTY, Mississippi to await transfer to the Mississippi Department of Corrections.

SO ORDERED AND ADJUDGED this the 26TH day of February, 2013.


CIRCUIT JUDGE

IN THE CIRCUIT COURT OF MARION COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VERSUS

ZACHARY STRINGER

FILED
MAR 05 2013

JANETTE NOLAN, CIRCUIT CLERK
BY _____ D.C.

PLAINTIFF

CRIMINAL CAUSE NO. K12-0055H

DEFENDANT

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT
OR, IN THE ALTERNATIVE, A NEW TRIAL

COMES NOW the Defendant, Zachary Stringer, through his attorney Thomas Fortner, and moves this honorable Court to grant a judgment of acquittal notwithstanding the verdict or, in the alternative, to grant Zachary Stringer a new trial. In support of this motion Zachary would show unto the Court the following, to wit:

1. The Court erred in denying the Defendant's Motion for Directed Verdict made at the close of the State's case in chief, which was based upon the State's failure to elicit any proof whatsoever on the material element of "deliberate design" charged in the indictment. The proof presented by the State, when viewed in the light most favorable to the State, failed to prove in any way that Zachary Stringer acted with 'deliberate design' to effect the death of his younger brother. The most incriminating proof, if any, offered by the State came from Mississippi Bureau of Investigation officer Ricky Dean, who stated that the Defendant told him:
 - a. That he pointed an unloaded rifle at his little brother while they were both in the Defendant's bedroom;
 - b. That he told his brother, while in the bedroom, that he would shoot his brother if his brother shot him with a dart gun;



- c. That later he and his brother went into the living room, where he sat on the sofa playing with the rifle;
- d. That while on the sofa he put a live cartridge into the magazine or the firing chamber of the rifle;
- e. That he thereafter stood up with the rifle, and when doing so the rifle fired unintentionally; and
- f. That he did not intend to kill Justin.

There was no proof presented to prove that the Defendant intentionally fired the gunshot that killed his little brother. While the proof did show that the 15 year old Defendant made inconsistent statements about the incident and tried to cover up his role in the accidental shooting, those inconsistent statements were all exculpatory and did not make a *prima facie* showing of 'deliberate design' murder.

2. The Court erred in giving an instruction to the jury that allowed it to consider and find Zachary Stringer guilty of the crime of manslaughter. In addition, the instruction given by the Court defining manslaughter (No. 11) was an erroneous statement of the elements of manslaughter, and it allowed and even encouraged the jury to find the Defendant guilty of manslaughter by concluding that the Defendant did any act that caused the death of his little brother, whether that act was culpably negligent or not and whether that act was with or without intent. There was no evidentiary basis in the proof at trial to make a *prima facie* showing that the Defendant acted with culpable negligence in the shooting death of his

brother. In addition there was no proof, in either the physical evidence or the Defendant's statements admitted into evidence, that would provide *prima facie* proof of culpable negligence.

3. The Court erred in giving Instruction No. 10 which attempted to set forth the elements of 'depraved heart' murder and allowed the jury to consider 'depraved heart' murder as a possible verdict. The instruction, as written, sets forth in paragraph 3 a definition of murder that attempts to define 'deliberate design' and 'depraved heart' as being one and the same. The paragraph, as written and given to the jury, actually defines deliberate design murder as *not* requiring a finding of premeditated design to effect death.
4. The Court erred in overruling the Defendant's Motion in Limine asking to exclude testimony by MBI agent Ricky Dean concerning all statements made by the Defendant to Dean preceeding, during and subsequent to a polygraph exam administered by Dean to the Defendant with the permission of the Defendant, his parents and his attorney. The Defendant waived his Miranda rights prior to the administering of the polygraph. Following the polygraph exam and without informing the Defendant that the test was completed, Dean continued to question the Defendant. Dean was not an investigator in the case, and the Defendant had no reason to believe that the questions posed by Dean were not a part of the polygraph test. The State argued the admissibility of the Defendant's answers to Dean's questions pursuant to *Wilhite v. State*, 791 So.2d 231 (Miss. App. 2000). However, *Wilhite* involved a defendant who, following a clear and unequivocal

ending of a polygraph test, then answered questions posed by the chief investigator in the case and not by the MBI polygrapher.

5. The Court erred in failing to grant the Defendant's motion for directed verdict and in failing to grant the Defendant a peremptory instruction directing the jury to return a verdict of not guilty, both of which should have been granted pursuant to *Weathersby v. State*, 147 So. 481 (Miss. 1933) and *Barclay v. State*, 43 So.2d 213 (Miss. 1949). The *Weathersby* rule states that "...where the Defendant or his witnesses were the only eyewitnesses to the homicide, their version must be accepted, unless substantially contradicted in material particulars by credible witnesses, physical facts, or facts commonly known...". *Barclay* further explains that inconsistent statements of the Defendant and/or his witnesses do not, in and of themselves, provide a sufficient basis for removing a case from the *Weathersby* rule:

"It is well established in the jurisprudence of this State that where the Defendant is the only surviving eyewitness to a homicide, his version of the killing must be accepted as true if it be reasonable and not substantially contradicted in material particulars by the physical facts or by the facts of common knowledge, and the prosecution does not meet the burden placed upon it by law in contradicting the defendant's version in mere matters of detail which do not go to the controlling substance. When the State relies upon circumstantial evidence to establish any essential element of the crime charged, that evidence must rise sufficiently high to exclude every reasonable doubt of guilt and every reasonable hypothesis of innocence. It is our duty to maintain these principles inviolate".

In the Defendant's case, he was the only eyewitness to the shooting death of his brother. The State presented the Defendant's version of the incident by admitting his statements to law enforcement officers. While his statements contained

inconsistencies, they did not contain any admissions of guilt to murder or manslaughter. There were no physical facts or facts of common knowledge presented at trial that refuted the Defendant's version of the killing; therefore the Court was required to accept his version as true. He should have been granted a directed verdict and/or peremptory instruction of acquittal.

6. The Court erred in denying the Defendant's *Motion In Limine* to prohibit introduction of character-type evidence concerning the Defendant's behavior and/or statements during the week following the incident and preceding the funeral of his little brother. State witnesses were allowed to testify to matters such as the action of the Defendant in feeling pleased with a new suit of clothes purchased for his brother's funeral; the Defendant becoming tired during the funeral proceedings and wishing aloud that the funeral was over; the Defendant suggesting at his brother's funeral that no one would laugh at his brother's teeth now; and other behavior of the Defendant at the funeral that was irrelevant, non-probative and meant solely to prejudice the jury against him. The evidence was admitted in violation of Rules 404 and 405, Miss. R. of Evid.
7. The Court erred in giving Instruction No. 8, which was both confusing and misleading on the meaning of "depraved heart" and "culpable negligence". The Court compounded this error by thereafter erroneously refusing to give Instruction No. D-5.
8. The Court erred in refusing to give Instruction D-8, which was a proper statement of the law. The refusal of the instruction violated the Defendant's constitutional

right to present his theory of the defense to the jury.

9. The Court erred in refusing Instruction D-9, which was the only accurate definition of the term "culpable negligence".
10. The Court erred in refusing to give Instruction D-8, which provided the correct definitions of murder and manslaughter.
11. The verdict of the jury was contrary to the law and against the overwhelming weight of the evidence.
12. Each of the above-stated errors, alone and in conjunction with one another, amounted to a violation of the Defendant's state and federal constitutional rights to a fair trial and due process of law.

WHEREFORE PREMISES CONSIDERED, the Defendant respectfully requests this honorable Court to grant the Defendant a judgment notwithstanding the verdict or a new trial.

Respectfully submitted,



THOMAS M. FORTNER,
Attorney for Zachary Stringer

ERIK M. LOWREY, P.A.
Attorneys at Law
Thomas M. Fortner MSB #5441
525 Corinne Street
Hattiesburg, MS 39401
601.582.5015
601.582.5046 (Fax)

CERTIFICATE OF SERVICE

I, Thomas M. Fortner, do hereby certify that I have this date caused to be mailed, postage paid, a true and correct copy of the above and foregoing *Motion for Judgment Notwithstanding the Verdict or, in the Alternative, a New Trial* to Honorable Hal Kittrell, District Attorney, at 500 Courthouse Square, Suite 3, Columbia, Mississippi 39429.

THIS the 4th day of March, 2013.



THOMAS M. FORTNER

AFFIDAVIT OF ROBERT A. CHAFFIN

STATE OF TEXAS

§

§

COUNTY OF HARRIS

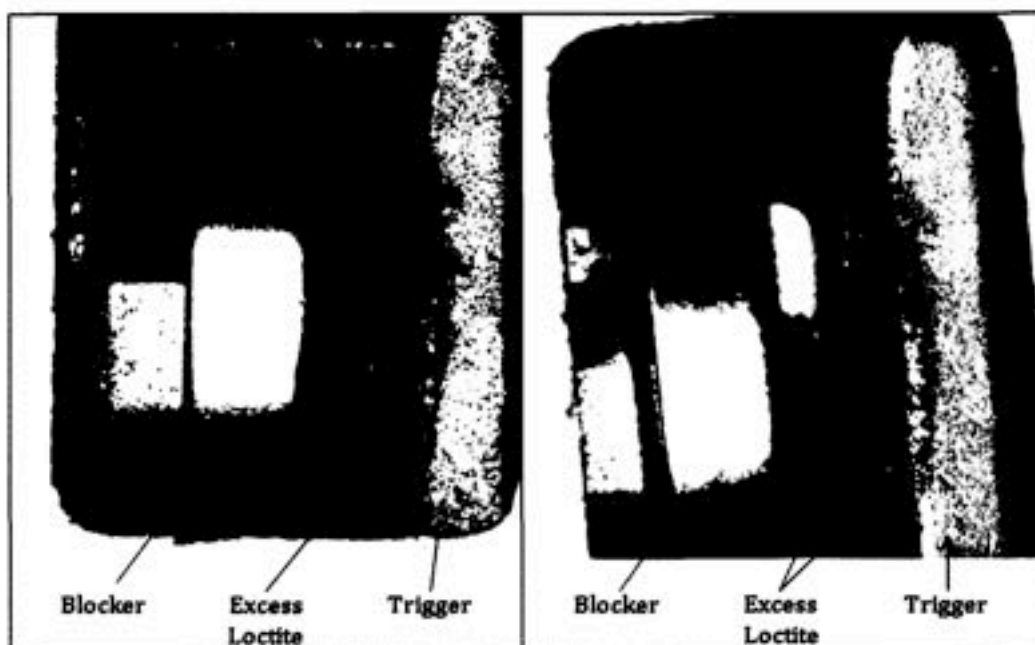
§

And now comes the undersigned affiant, **ROBERT A. CHAFFIN**, who, being of proper age and duly sworn, states the following:

1. I, **ROBERT A. CHAFFIN**, am over 18 years of age, am of sound mind and am in all ways competent to make this affidavit.
2. The facts stated in this affidavit are within my personal knowledge and are true and correct, and this affidavit and my testimony are relevant to assist the trier of fact to understand the evidence involved and to determine the facts at issue in this case.
3. I have been licensed to practice law and have been principally involved in personal injury cases in Texas since 1972. During that time I have handled over one thousand civil lawsuits including approximately 25 product liability cases involving Remington Model 700 rifles that fired without a trigger pull resulting in injury and/or deaths. These events often happen during the time when the rifle is being loaded and/or unloaded as well as any time the safety and/or bolt is moved. Further, the rifle has been known to jar off with the rifle firing after a slight bump under certain circumstances. I have been interviewed by CNBC and 60 Minutes as well as Business Week in conjunction with my representation of Model 700 victims and I'm generally recognized as having substantial expertise in terms of legal representation on the subject of Remington Model 700 accidental firings.
4. The Remington Model 700 has undoubtedly been a good selling product for Remington, but its fire control has proven to be a continuing source of liability for Remington. To date, Remington has received over 10,000 customer complaints and paid out many million in settlements since 1993 pertaining to unintended discharges for Models 700 and 710 containing the "Walker" fire control.

Remington continued to produce rifles containing the dangerous "Walker" fire control until the mid-2000s when it developed and began incorporating a new fire control system—the "X-Mark Pro" or "XMP". However, the XMP would not prove to be Remington's savior. Remington made and sold roughly 1.3 million Model 700 XMP rifles between 2006 and May of 2014, including the rifle which I have been informed was involved in the Stringer case. Every one of those rifles was manufactured in a negligent manner that may cause the rifle to fire without the trigger being pulled. Specifically, all XMP rifles manufactured between 2006 and May 2014 were assembled using a technique that required "rolling" the entire length of the "blocker screw" and "engagement screw" in a glue-like substance called "Loctite." During normal operation of the rifle, the blocker screw pushes back against the trigger and "blocks" it from moving forward when the safety is "on." When the safety is switched "off," the blocker screw pulls away from the trigger so the trigger has room to move forward when it is pulled. Remington's assembly technique resulted in excess Loctite being deposited on the blocker screw and subsequently transferred to the trigger when the blocker contacts the trigger as seen below:





The photos above show the "blocker screw" with the safety "ON" (left) and safety "OFF" (right). James Ronkainen, Remington's chief engineer on the XMP, has given sworn testimony that the excess Loctite found in XMP trigger mechanisms was a mistake in the manufacturing process. See **Ex. A**, Depo of Ronkainen at p. 24:8-22. Ronkainen went on to explain how the excess sealant (Loctite) causes the blocker screw to "stick" to the trigger which creates a dangerously defective condition in XMP Model 700 rifles:

16 Q. And -- and that in and of itself is a mistake in
 17 the manufacturing process for the trigger and the -- and --
 18 and the blocker screw to be attached to one another, right?
 19 A. That's not desirable.
 20 Q. Why is it not desirable?
 21 **A. With that intimate connection between those two**
 22 **parts, as the safety is moved from safe to fire, the**
 23 **interface between those two, the blocker could pull the**
 24 **trigger along and forward with that.**

Ex. A, Depo of Ronkainen at p. 30:12-24.


The blocker screw pulling the trigger forward is a dangerous manufacturing defect because it lessens the already miniscule amount of "engagement" between the top of the trigger and the "sear." **Ex. A**, Depo of Ronkainen at pp. 32:12-19, 40:2-25. This "precipitous engagement" constitutes a dangerous condition wherein the Model 700 rifle will fire without the trigger being pulled. **Ex. A**, Depo of Ronkainen at p. 41:1-5. Not surprisingly, multiple lab tests by Remington and a multitude of similar incident customer complaints establish that Model 700 XMP rifles exhibiting this defect will fire under a broad range of circumstances *without the trigger being pulled*. **Ex. B** - Sample Customer Complaint From Remington's Product Service Records.

In January of 2014, Remington received a video from a customer, J.R. Otto, wherein Mr. Otto


demonstrated an XMP in factory specified condition firing upon safety release. This event has occurred frequently enough that Remington created the abbreviation "FSR" for a fire upon safety release. As early as January 2010, Remington had also received a video from Michael Brees depicting an XMP in factory specified condition firing upon safety release and firing upon bolt opening. Remington initiated an investigation in March 2014 and examined all rifles returned by customers. Remington found that excess Loctite was present in virtually all of the rifles returned with the complaint they would fire without a trigger pull. Remington also conducted tests which confirmed that XMP rifles contaminated with excess Loctite will intermittently fire without pulling the trigger. As a result of this investigation and customer complaints received at that time, Remington recalled all 1.3 million XMP rifles in order to repair and replace the trigger mechanisms:

Remington.

PRODUCT SAFETY WARNING AND RECALL NOTICE



REMINGTON MODEL 700™ AND MODEL SEVEN™ RIFLES



PRODUCTS: Remington Arms Company, LLC ("Remington") is voluntarily recalling Remington Model 700™ and Model Seven™ rifles with X-Mark Pro® ("XMP®") triggers, manufactured from May 1, 2006 to April 9, 2014.

DESCRIPTION OF THE HAZARD: Remington has determined that some Model 700 and Model Seven rifles with XMP triggers could, under certain circumstances, unintentionally discharge. A Remington investigation has determined that some XMP triggers might have excess bonding agent used in the assembly process. While Remington has the utmost confidence in the design of the XMP trigger, it is undertaking this recall in the interest of consumer safety to remove any potential excess bonding agent applied in the assembly process.

4. Unfortunately, Remington's recall came several years too late and has only captured roughly 15% of the 1,328,481 defective XMP rifles sold between 2006 and 2014. As a result, defective XMP rifles have claimed too many victims over the past decade, including:

- a. **Charlotte, NC - 12/23/2011 (3 Victims):** 16-year-old Jasmine Thar was tragically shot and killed by a defective Remington XMP M700 rifle. Her neighbor across the street was inside his house removing the rifle from a case when it discharged and shot Ms. Thar who was standing in her front yard. This same bullet also struck and severely injured Jahmesha McMillian and Treka McMillian.
- b. **Crockett, TX - 11/14/2012:** William Edge had been deer hunting with his XMP M700 rifle and was walking with a rifle case in his right hand and the rifle in his left hand. The rifle case bumped the XMP and the rifle unexpectedly discharged without anything touching the trigger. The malfunction shot off 2 toes on Mr. Edge's left foot.
- c. **San Saba, TX - 11/6/2013:** Brett Bachert had just shot an impala with his XMP M700 rifle while hunting at a game ranch. The rifle was laying on the impala without anyone touching it

when it suddenly discharged and shot Mr. Bachert through the left leg.

- d. **Sorrento, LA - 12/28/2013:** Joi Williams was shot through the left leg when her husband's XMP M700 rifle discharged in the back of their Chevy Tahoe without anyone pulling the trigger.

5. The XMP M700 defect and its causal relationship to unintended discharges has also been confirmed by one of the most well-respected experts in the firearms business—Tom Butters. Mr. Butters earned a Bachelor of Arts degree from Duke University in 1954 and then joined the U.S. Air Force. While in the U.S. Air Force, Mr. Butters served as First Lieutenant and flight controller assigned to NATO and he was also a member of the 1971st AACS Squadron's competition shooting team. In 1960, Mr. Butters earned a Bachelor of Science degree in electrical engineering from Southern Methodist University.

Tom Butters has been a licensed professional engineer in the State of Texas for more than 50 years. Mr. Butters first became interested in the operation and investigation of firearm failures in the mid-1940s. Since there were and are no publicly offered courses that specifically taught firearms design,¹ he acquired knowledge of firearms and trigger mechanism designs in the same manner as other engineers who focus their attention exclusively in gun design: by studying, modifying, generating innovative solutions to problems presented by firearms designs in general. Tom Butters has largely performed his own independent firearm studies aided over the last 15-20 years by materials obtained in discovery from firearms manufacturers.

As early as 1960, Tom Butters was also engaged in the design of fire control systems not only for his own use, but potentially for public sale. Among those firearms for which he designed and fabricated safety and firing mechanisms were the U.S. Springfield Model of 1903, the U.S. Enfield Model of 1917, the German Model 98, FN Model of 1950, and the Anschutz 1400 series for which he designed and built an electric trigger system. Numerous other minor projects involved studies of products of most major U.S. Manufacturers including Colt, Smith & Wesson, Remington, Ruger, and Winchester. In February of 2000, Tom Butters and Mr. Jack Belk were awarded a United States Patent for a passive automatic safety applicable to firearms with a sear and hammer mounted on a common trigger plate or base.²

Tom Butters has been invited to deliver numerous lectures to the American Custom Gunmakers Guild on the subject of firearms design and he has also published numerous articles relating to firearm design, manufacture, and safety. Finally, Mr. Butters has served on numerous occasions as a range safety officer for the Texas State Rifle Association and as such he is intimately familiar with safe gun handling procedures. In summary, Tom Butters is a highly-qualified engineer who has been received as an expert in dozens of defective firearms cases throughout the United States over the last two decades. Mr. Butters' affidavit from an XMP case is attached hereto as **Ex. C**.

6. **CONCLUSION:** Based on my experience and the information obtained in numerous civil cases against Remington, all Remington Model 700 XMP rifles manufactured between 2006 and 2014 contain a dangerous manufacturing defect which makes each and every one susceptible to firing without the trigger being pulled.

¹ There are courses in gunsmithing and repair, but these do not address the kinematics of trigger mechanisms and safety devices nor do they address gun designs using advanced physics and applied engineering technology.

² Trigger Safety Mechanism, United States Patent #6,119,387 issued 09/19/2000 to John T. Butters and Henry J. Belk.

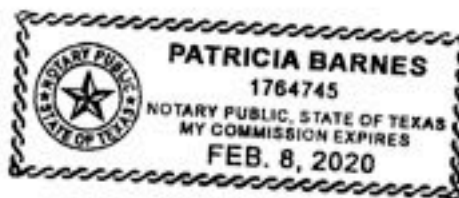
Further Affiant Sayeth Not.


Robert A. Chaffin

SWORN AND SUBSCRIBED BEFORE ME on this the 28th day of February, 2017, to certify which witness my hand and seal of office.


NOTARY

Notary Public in and for the State of Texas.



1		NO. 14-0201	
2			
3	WILLIAM DAN EDGE and	\$	IN THE DISTRICT COURT OF
4	JESSIE EDGE	\$	
5		\$	
6		\$	
7	VS.	\$	HOUSTON COUNTY, TEXAS
8		\$	
9		\$	
10	REMINGTON ARMS COMPANY, INC.	\$	
11	and WAL-MART STORES, INC.	\$	3RD JUDICIAL DISTRICT

NO. 14-0201

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	VS.	\$	HOUSTON COUNTY, TEXAS
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		\$	
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	REMINGTON ARMS COMPANY, INC.	\$	
7	and WAL-MART STORES, INC.	\$	3RD JUDICIAL DISTRICT

WILLIAM DAN EDGE and \$ IN THE DISTRICT COURT OF
JESSIE EDGE \$

3	JESSIE EDGE	\$
		\$

JESSIE EDGE \$
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[illegible]

VS. \$
\$ HOUSTON COUNTY, TEXAS

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6	REMINGTON ARMS COMPANY, INC.	5
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9 VIDEOTAPED DEPOSITION OF
10 JIM RONKAINEN
11 LOUISVILLE, KENTUCKY
12 MARCH 26, 2015

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24 REPORTED BY: LINDA FOX, CCR 20042030

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25 FILE NO.: A90295E

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A90295E
JIM RONKAINEN MARCH 26, 2015

1 for the test process did not contain any Loctite on the tip	09:17:50	1 Q. And what you're looking at here is a negligently	09:20:42
2 of the engagement screw or the tip of the blocker screw?	09:17:50	2 manufactured fire control system, right?	09:20:45
3 A. We did not inspect for it but the intent was that	09:17:50	3 MR. WILLS: Object to the form of the	09:20:48
4 there wouldn't be any there.	09:17:50	4 question; calls for a legal conclusion.	09:20:48
5 Q. How do you know that's the intent?	09:17:50	5 A. I'm looking at a picture that shows excess Loctite	09:20:51
6 A. The -- the only place that Loctite really does any	09:17:52	6 at the tip of the blocker screw between the -- the tip of	09:20:51
7 good in the -- in the assembly is -- the purpose of it is to	09:17:52	7 the blocker screw and the trigger.	09:20:51
8 lock the screw to the mating part so that it's not able to	09:17:52	8 Q. (BY MR. CHAFFIN) And this is not the way the gun	09:20:51
9 be adjusted.	09:17:52	9 was intended to be made by you, the designer, is it?	09:20:58
10 Q. So it's totally unnecessary to have it either on	09:17:55	10 A. The presence of Loctite in that location was not	09:21:01
11 the tip of the blocker or the tip of the engagement screw	09:17:55	11 as intended by design.	09:21:01
12 outside of the assembly process, right?	09:17:55	12 Q. Not intended, right?	09:21:06
13 A. It -- it doesn't function or serve any purpose out	09:18:00	13 MR. WILLS: That's what he said, Bob.	09:21:06
14 there.	09:18:00	14 Q. (BY MR. CHAFFIN) Not intended by the designer,	09:21:09
15 Q. Okay. So, from what you can tell -- and -- and	09:17:52	15 which is you, to be -- look like this, is it?	09:21:09
16 then -- then did -- did you subsequently have an opportunity	09:19:03	16 A. Yes. That's what I said.	09:21:11
17 with Mr. Watkins to examine photographs of -- of the blocker	09:19:07	17 Q. Okay. And this is a mistake in the manufacturing	09:21:13
18 screw, the engagement screw on some of the rifles that were	09:19:12	18 process, right?	09:21:15
19 actually built?	09:19:12	19 MR. WILLS: Object to the form of the	09:21:17
20 A. Yes.	09:19:19	20 question; augmentive.	09:21:18
21 Q. Now, Mr. Watkins, he took a lot of pictures, you	09:19:19	21 A. This is not per the design specifications for the	09:21:21
22 knew that, right?	09:19:22	22 triggers, no.	09:21:24
23 A. Yes.	09:19:23	23 Q. (BY MR. CHAFFIN) And it -- would you agree with me	09:21:25
24 Q. He -- he disassembled a lot of fire controls, took	09:19:23	24 that the condition you see in this photograph could	09:21:25
25 pictures of the interior, the blocker screw, the engagement	09:19:23	25 potentially cause this rifle to fire without the trigger	09:21:25
Page 22		Page 24	
1 screw, you knew that, right?	09:19:23	1 being pulled?	09:21:30
2 A. Yes.	09:19:29	2 MR. WILLS: Object; it's an incomplete	09:21:31
3 Q. And did you take a look at a lot of those	09:19:30	3 hypothetical.	09:21:31
4 pictures?	09:19:30	4 A. In order for that material to cause -- potentially	09:21:35
5 A. I saw several of the pictures. I don't know what	09:19:31	5 cause the trigger to be pulled, I would have to con --	09:21:38
6 percentage of the pictures he took that I actually saw.	09:19:34	6 confirm that it's in a liquid form. It's difficult to tell,	09:21:38
7 Q. Okay. I want to show you a few pictures here	09:19:36	7 it looks like it may be but I -- I can't tell without	09:21:44
8 for -- produced and I'm going to use the video because it's	09:19:42	8 actually examining the -- the trigger assembly itself. A	09:21:47
9 better from what's called McNeil Exhibit 1198. And I'll try	09:19:43	9 static picture or photograph doesn't completely reveal the	09:21:49
10 to identify them by serial number.	09:19:43	10 condition of the Loctite in this case.	09:21:54
11 * * * * *	09:19:56	11 MR. CHAFFIN: Yeah. Move it back.	09:21:57
12 (There are conversations being held out of the hearing of	09:19:56	12 CAMERAMAN: Got to close this --	09:22:01
13 the reporter.)	09:19:56	13 Q. (BY MR. CHAFFIN) So we'll take a look here then	09:22:01
14 * * * * *	09:19:56	14 and -- and now what are we looking at?	09:22:08
15 MR. CHAFFIN: We'll just pick this one out	09:19:43	15 MR. WILLS: Is that the same number of our --	09:22:09
16 here randomly called 6673556.	09:19:43	16 Q. (BY MR. CHAFFIN) Same 556, just using this as an	09:22:10
17 Q. (BY MR. CHAFFIN) Now, can you see this picture?	09:20:25	17 example because I represent to you there's about 40 or 50	09:22:10
18 A. Yes, sir.	09:20:28	18 that look very similar to this, okay?	09:22:10
19 Q. Now, this is a rifle, it was randomly selected by	09:20:28	19 A. Okay.	09:22:10
20 Mr. Watkins. And, of course, you see here -- you recognize	09:20:30	20 Q. What are we looking at?	09:22:19
21 the blocker screw?	09:20:30	21 MR. WILLS: You don't -- you don't have to	09:22:10
22 A. Yes, sir.	09:20:32	22 accept that representation but you may.	09:22:20
23 Q. And you recognize this substance here as being	09:20:37	23 Q. (BY MR. CHAFFIN) Well, we can go through all of	09:22:21
24 Loctite?	09:20:40	24 them if you want to.	09:22:21
25 A. Yes, sir.	09:20:41	25 What -- what are we looking at now?	09:22:20
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1 I don't believe, though, that that causes any deleterious	09:26:13	1 question?	09:27:53
2 effects in the particular condition.	09:26:16	2 A. As I stated, the form of the material that's at	09:27:53
3 The material that's adhering to the front of the	09:26:17	3 that interface has very strong effect on the behavior of the	09:27:53
4 trigger appears to have been fully cured, which would be	09:26:17	4 trigger assembly.	09:27:53
5 hard and it's not in liquid form.	09:26:17	5 Q. Just let me flip over here just so the jury will	09:27:47
6 Q. Well, at some point in time the trigger and the	09:26:28	6 see what we're talking about here. And we get a picture	09:28:04
7 blocker appear to have been stuck together here, right?	09:26:28	7 here and now just flip over.	09:28:08
8 MR. CHAFFIN: Object to the form of the	09:26:28	8 We've used this before and this little spot right	09:28:17
9 question.	09:26:28	9 here is where the trigger and the sear rest together called	09:28:20
10 Q. (BY MR. CHAFFIN) Yes, sir?	09:26:28	10 the engagement, right?	09:28:21
11 A. They were in contact with each other, yes.	09:26:34	11 A. Yes, sir.	09:28:26
12 Q. Stuck at some point in time and then they broke	09:26:35	12 Q. And, if this blocker here is attached to the	09:28:27
13 away, right?	09:26:35	13 trigger and causes the trigger to move forward, then this	09:28:29
14 A. They were attached to each other perhaps by the	09:26:39	14 meniscal engagement that's already here can become lessened,	09:28:31
15 Loctite if it cured with it at the interface, yes, sir.	09:26:41	15 right?	09:28:31
16 Q. And -- and that in and of itself is a mistake in	09:26:44	16 MR. WILLS: Object to the form of the	09:28:31
17 the manufacturing process for the trigger and the -- and --	09:26:44	17 question.	09:28:31
18 and the blocker screw to be attached to one another, right?	09:26:44	18 A. The -- the engagement can be lessened if the	09:28:40
19 A. That's not desirable.	09:26:41	19 blocker screw pulls the trigger forward.	09:28:40
20 Q. Why is it not desirable?	09:26:55	20 Q. (BY MR. CHAFFIN) And -- and what is the minimum	09:28:41
21 A. With that intimate connection between those two	09:26:57	21 engagement or the minimum distance that these two things are	09:28:41
22 parts, as the safety is moved from safe to fire, the	09:26:57	22 supposed sit together?	09:28:41
23 interface between those two, the blocker could pull the	09:26:57	23 A. I would have to review the drawings to see exactly	09:28:50
24 trigger along and forward with that.	09:26:57	24 what it is but it's between 19 and 20 thousandths of an	09:28:53
25 Q. And we'll get to it later, but basically, whenever	09:27:09	25 inch --	09:28:54
Page 30		Page 32	
1 you got the material on the blocker and the material on the	09:27:09	1 Q. Twenty-one thousandths --	09:28:55
2 face of the -- of the trigger, you got a possibility that	09:27:09	2 A. -- based -- based on my -- my -- my memory.	09:28:55
3 the trigger has been pulled forward so that you have	09:27:09	3 Q. Twenty-one thousandths of an inch is it -- is it a	09:28:57
4 improper engagement then between the trigger and the sear,	09:27:09	4 speck, right?	09:28:57
5 right?	09:27:09	5 MR. WILLS: Object to the form.	09:28:58
6 MR. WILLS: Object to the form; it's an	09:27:31	6 Q. (BY MR. CHAFFIN) Give or take one -- one --	09:28:57
7 incomplete hypothetical.	09:27:31	7 between 19 and 21 or --	09:28:57
8 A. It's very dependent upon the form of the material	09:27:31	8 A. It -- it could be. I would have to look at the	09:28:58
9 that's at that interface.	09:27:31	9 drawings to tell you for sure.	09:28:58
10 Q. (BY MR. CHAFFIN) But that's -- that's what the	09:27:09	10 Q. And I've heard it said that that's -- that's --	09:29:02
11 possibility is, if the trigger moves forward and then they	09:27:09	11 how many human hairs is that?	09:29:02
12 don't have enough engagement between the trigger and the	09:27:09	12 A. Assuming a human hair is about 4 thousandths of an	09:28:58
13 sear, right?	09:27:09	13 inch, it's about five human hairs.	09:28:58
14 MR. WILLS: Object to the form of the	09:27:37	14 Q. Okay. So the -- the whole function of this gun is	09:29:18
15 question. It's an incomplete hypothetical.	09:27:38	15 dependent upon this sear resting on the edge of this trigger	09:29:21
16 Q. (BY MR. CHAFFIN) You understand what I'm saying,	09:27:40	16 here of a distance of about -- by the strength of five human	09:29:22
17 don't you, Mr. Ronkainen?	09:27:40	17 hairs, right?	09:29:22
18 MR. WILLS: Object to the form of the	09:27:46	18 MR. WILLS: Object to the form of the	09:29:23
19 question.	09:27:46	19 question; incomplete hypothetical.	09:29:23
20 MR. CHAFFIN: I get it. I get your objection.	09:27:47	20 A. It's dependent upon that much engagement between	09:29:40
21 Q. (BY MR. CHAFFIN) But do you understand?	09:27:47	21 those two parts.	09:29:40
22 MR. WILLS: Well, I get your questions, you	09:27:47	22 Q. (BY MR. CHAFFIN) Five human hairs, right?	09:29:41
23 keep asking the same questions, I'm going to keep making the	09:27:47	23 MR. WILLS: Object to the form of the	09:29:43
24 same objections.	09:27:47	24 question; asked and answered.	09:29:43
25 Q. (BY MR. CHAFFIN) Do -- do you understand the	09:27:53	25 Q. (BY MR. CHAFFIN) True?	09:29:41
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1	A. He said you were plaintiff's attorney.	09:33:36	1	UNKNOWN OF PERSON ON VIDEO: -- when I lift --	09:36:00
2	Q. What does that mean? That a bad word at	09:33:36	2	Q. (BY MR. CHAFFIN) Let me -- let me ask you	09:36:00
3	Remington?	09:33:36	3	something now, Mr. Ronkainen. Why -- why would the rifle	09:36:00
4	A. No.	09:33:36	4	not fire when he pushed the safety off but it would fire	09:36:00
5	Q. You're not offended because I'm here representing	09:33:57	5	when he lifted the bolt?	09:36:00
6	the family of a dead little girl, are you?	09:33:57	6	A. That's indicative of a precipitous engagement,	09:36:09
7	A. No, sir.	09:34:03	7	the -- the engagement reduced.	09:36:09
8	Q. Okay. Let's -- let's look at the Michael	09:34:03	8	Q. All right. That's exactly what we were talking	09:36:33
9	Breeze -- you -- you were there in January of 2010 at	09:34:08	9	about just a minute ago in the photograph that we looked at,	09:36:35
10	Remington, right?	09:34:11	10	if we can just switch, then we'll continue back here. We --	09:36:37
11	MR. WILLIS: Asked and answered. Go ahead.	09:34:11	11	we looked at this together --	09:36:51
12	A. Yes. I worked at Remington in January of 2010.	09:34:14	12	A. Uh-huh.	09:36:53
13	Q. (BY MR. CHAFFIN) And this is a video that came	09:34:14	13	Q. -- and -- and this is what we're talking about the	09:36:53
14	into the possession of Remington's Arm Service department in	09:34:14	14	point of engagement right here, right?	09:36:53
15	January of 2010, you understand that?	09:34:14	15	A. Yes, sir.	09:36:57
16	A. I do.	09:34:24	16	Q. And the fact that the rifle would fire when he	09:36:58
17	Q. Okay. And -- and let's take a look at it.	09:34:26	17	lifted the bolt, as you said is -- is indicative of a	09:36:59
18	* * * * *	09:34:29	18	precipitous engagement, right?	09:37:02
19	(Whereupon, the video is playing.)	09:34:29	19	A. The engagement have been reduced from what the	09:37:06
20	* * * * *	09:34:29	20	original factory settings were.	09:37:07
21	UNKNOWN OF PERSON ON VIDEO: All right. This	09:34:30	21	Q. Right. So what we see there is that minimum	09:37:10
22	video is of my new Remington 700 SPS. I found out that cold	09:34:32	22	movement or just a minimum touch of the rifle, once the	09:37:11
23	seems to accept it -- or affect the action as soon as	09:34:40	23	engagement is reduced, will cause the rifle to fire, right?	09:37:11
24	you let the b -- or the rifle cool down to about 30, 35	09:34:45	24	A. In the case of what he demonstrated there, yes,	09:37:19
25	degrees ambient temperature outside, the safety releases the	09:34:47	25	sir.	09:37:20
Page 38			Page 40		
1	firing pin, not the trigger. So this is video record.	09:34:47	1	Q. Okay. So anytime you -- this trigger is moved and	09:37:22
2	Thank you very much.	09:34:47	2	you have quote, unquote, precipitous engagement, some slight	09:37:22
3	All right. This is my brand new Remington SPS 380	09:35:01	3	movement of the rifle can cause the rifle to fire, right?	09:37:22
4	Varmint rifle that I purchased the first week in December on	09:35:05	4	A. When engagement is reduced to a certain level,	09:37:31
5	a Tuesday. On Friday, I took it to the range, along with a	09:35:05	5	yes, sir, that's correct.	09:37:31
6	friend of mine. And after about ten rounds out of the	09:35:05	6	Q. Whenever the engagement here, between the trigger	09:37:35
7	rifle, the rifle started firing as soon as you released the	09:35:05	7	and sear is reduced to -- what you would say a precipitous	09:37:35
8	safety.	09:35:05	8	level, the rifle may fire with just slight movement of the	09:37:35
9	I contact -- contacted the Remington customer	09:35:05	9	rifle, right?	09:37:35
10	service department Monday and they did send me a shipping	09:35:05	10	A. I said yes.	09:37:45
11	label to return the rifle to them, which I'm going to do but	09:35:05	11	Q. And exactly how far does the engagement have to	09:37:47
12	I wanted to make a video reference of this before I sent the	09:35:05	12	be reduced to get this precipitous condition where it will	09:37:49
13	rifle off, make sure that they know I do have a problem.	09:35:05	13	fire with slight movement?	09:37:49
14	One of the things we found is that at room	09:35:06	14	A. I -- I have not determined that.	09:37:55
15	temperatures, the rifle does not have a problem. It is	09:35:06	15	Q. Have you attempted to determine that?	09:37:56
16	always seems to be affected in the cold. So last night I	09:35:06	16	A. I have not.	09:37:56
17	left the rifle out in my garage all night and I came here to	09:35:06	17	Q. Well, if the rifle is say, is re -- if the	09:38:03
18	the rifle club this morning and we're going to see if it --	09:35:06	18	engagement level is re -- any engagement below 21	09:38:03
19	or not.	09:35:06	19	thousandths of an inch or -- or -- did you say is it five or	09:38:03
20	As you can see now, the bolt's open, my chamber is	09:35:06	20	four human hairs?	09:38:03
21	clear, I'm going to go ahead and put the safety on, close	09:35:59	21	A. I believe it's about five human hairs.	09:38:13
22	the bolt, and then when I release the safety you notice the	09:35:59	22	Q. Any -- any -- any engagement of this thing right	09:38:14
23	bolt, nothing's touching the -- the trigger, it did not do	09:35:59	23	here, the trigger and the sear, below five human hairs is	09:38:14
24	it. Let's try -- whoop, it just fired when I --	09:35:59	24	considered to be unacceptable and dangerous when it's in the	09:38:14
25	MR. CHAFFIN: Stop right there.	09:36:00	25	manufacturing process, right?	09:38:14
Page 39			Page 41		

Remington Arms Co., Inc.
Product Service
Legal Case #:4304

Case Information

RE#	Date Opened	Date Opened(PS)	Date Closed	Incident Date	Pre Lit	Lit	Obsolete
186710	1/19/2010	1/27/2010	2/3/2010	12/4/2009			

Customer Information

Type	Business	First Name	Last Name	Street	City	State	Zip	Age	Contact
Reporter		Michael	Brees	3801 Red Maple	Amelia	OH	45102		H 513-253-3804 E Mbrees1@gmail.com

Incident Information

Claims	Codes	Repair Est.	Medical Treatment	Medical Status
P1				
PD				
S	Cause:4038	Could Not Duplicate Concern		Unknown
C	Fires on Safe release in cold temps	Concern:1007 Fired on Safe Release		

Customer reported in a letter - He bought the gun new at a local retail store. 3 days after purchase he was shooting at a gun range w/a friend in cold temps & after the 11th round it fired several times as soon as he took it off Safe. He also video taped the gun doing that after sitting in cold temps overnight. He is going to send video to Fred S. for review. He only wants gun replaced - not repaired. dmf

Firearm Information

Mfg.	Type	Model/Ga.	SKU	Serial	Bbl.	DOM
Remington	CF/BA	700/308 WIN	85563	G6866643	KD	5/19/2009 9:14:57 PM
Date Purchased	Where Purchased	Accessories	Original Owner			
	DICK S SPORTING GOODS		Y			

CONCERN:FSR

Ammunition Information

Mfg.	Type	Cal/Ga.	SKU	UPC	DOM	Mfg. Code
Hornady	BTSP/150 gr	308 WIN				
Concern	Other	Factory	Reload			
0:		Y	N			

Other Products Information - None Defined

Settlement

Settlement	Release of Claims	Release Date	Reimbursement	Cash Settlement	Reim. Date APV	Cash Date APV
Replace w/84218 in exchange						
	Repair/Replacement Cost	Repair/Replacement Date				
	\$203.79	2/3/2010				

2/3/10: Per Fred S. - Could not duplicate concern. Would like to replace trigger assembly to restore faith in rifle. 2/3/10: I called customer & he only wants a replacement rifle. The one he sent is a special run for Dick's Sptg Gds from 2009. We cannot get anymore of those. He approved replacement w/84218 - M/700 SPS Varmint, 308 Win. dmf

Examination[Remington/CF/BA]

Part	Sub-Part	Code	Comment
Examination	Examiner		B.TRAVIS
	Exam Date		1/27/2010
	Product Type		RF
	Action Type		A
	Assigned To		F.SUPRY
Cause	4038	Could Not Duplicate Concern	CUST. HAS VIDEO OF INCIDENT
Barrel	Description		26" 308 WIN
	Date Code		KD
	Bore Plugged	False	
	Bulged	False	
	Fired	False	
	Fired while Obstructed		
	Muzzle/Crown Condition	Like new; Functioning	
Bolt	Firing Pin	Like new; Functioning	
	Shroud	Like new; Functioning	
	Face	Like new; Functioning	
	Handle	Like new; Functioning	
	Stop	Like new; Functioning	
Extractor	Condition	Like new; Functioning	
	Cut Condition	Like new; Functioning	
	Ext/Eject Test	False	
Locking	Block Condition	---Select---	
	Lug Condition	Like new; Functioning	
	Notch Condition	---Select---	
Overall	Exterior Condition	Like new; Functioning	
	Stock Condition	Like new; Functioning	
	Fore End Condition	---Select---	
Receiver	Condition	Like new; Functioning	
	Bulged	False	
Safety	Description		STANDARD XMP SAFETY
	Function	Like new; Functioning	
	Sub-Assembly	Non-ISS	
Sear	Lift	---Select---	.013
	Notch	Like new; Functioning	
	Tests	Test Fired	False
Feeding Test		False	
Trigger	Condition	Like new; Functioning	
	Pull	---Select---	3#
	Altered	False	
	Sub-Assembly	X-Mark Pro	

X

4304

013
26"
31
K05/09

01/12/2010

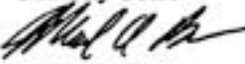
Dear Sirs,

I am sending you my Remington 700 sps varmint rifle because of a major malfunction I experienced with the rifle Three days after purchase. I bought the rifle from a major sporting goods retail store on Dec 1 2009. On Dec 4 I went to the Miami Rifle and Pistol club to sight in the rifle with a friend of mine. The first ten rounds were fired without incident. On the eleventh round the rifle fired as soon as I released the safety. My friend commented that I must have inadvertently touched the trigger with my finger. I reloaded the rifle with a factory loaded Hornady 150 gr BTSP. Again the rifle fired as soon as the safety was released. The rifle continued to display this flaw approximately a dozen times on a empty chamber. When I got the rifle home the rifle stopped malfunctioning as soon as it was exposed to warmer temps. I have since been unable to duplicate the behavior when the rifle is warm.

Today I left the rifle in my garage to expose it to winter temps of approximately Thirty degrees, I then took the rifle to the rifle club range, and video taped the above mentioned behavior. If you contact me @ 513-253-3804 cell or by email 2 mbrees1@gmail.com I will be happy to provide you with a copy of this video.

Please do not send this rifle back to me, without first contacting me regarding how this could happen and how it was corrected. My strong preference would be for you to replace this rifle with a new one, Not to repair this one.

Sincerely Yours



Michael A Brees
3801 Red Maple
Amelia, Oh 45102
513-253-3804
Mbrees1@gmail.com

PS. All shooting was with factory loaded ammo, and this rifle

has never been modified or worked on by a aftermarket gunsmith, The only thing I have done to the rifle is to run a couple of cleaning patches down the barrel.

G6866643

Model: 700



RE00186710

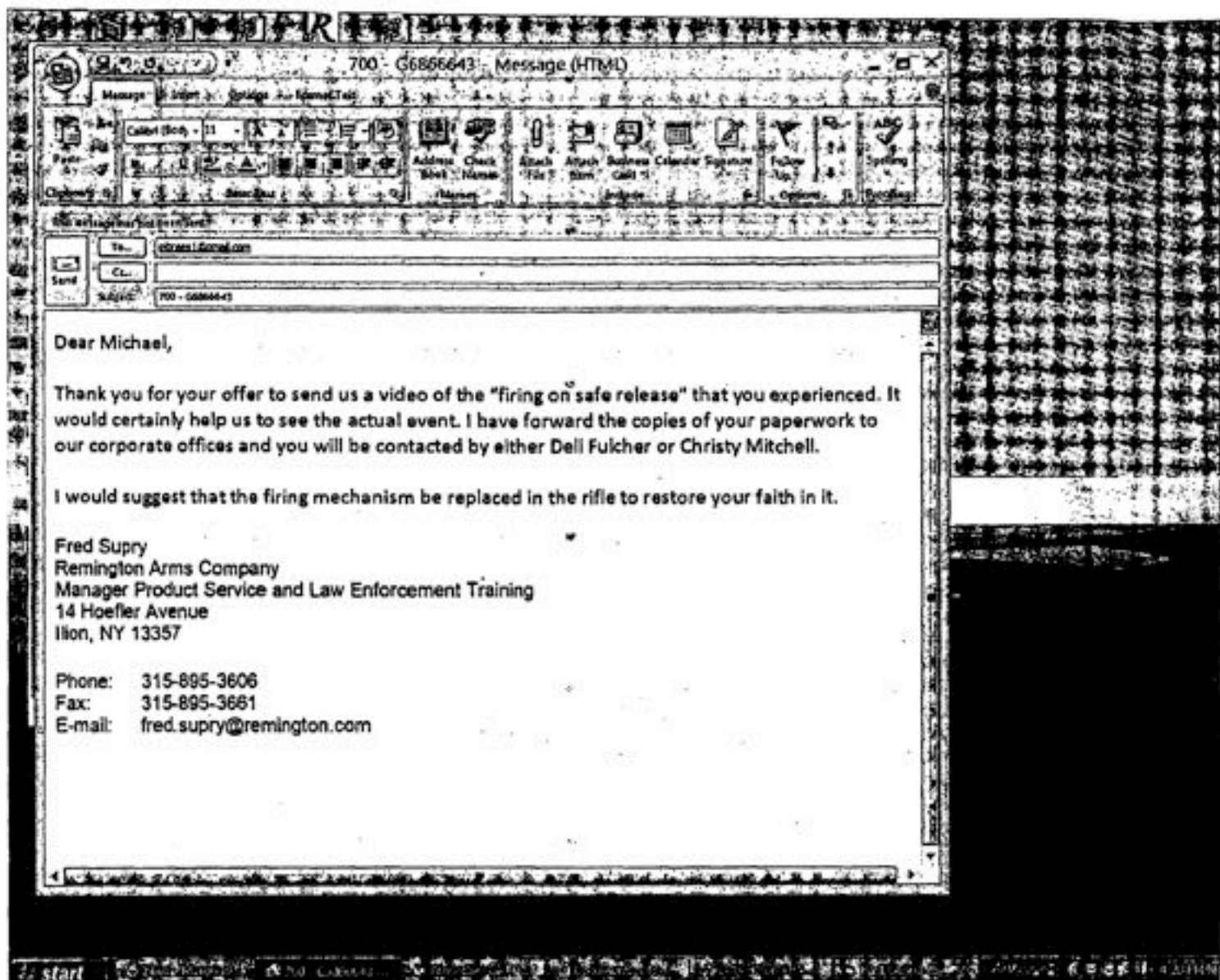
RECEIVED
JAN 26 2010

BY:.....

I sent the attached e-mail to him about his offer to provide the video copy.

REC'D 1/27/10

84218



-Wants rifle repaired before and - 3/10/06

Remington

Factory Repair Instructions

(NOTE: Please print and complete this form, and then include it with your firearm.)

Model Number: 700 SPS VARMINT		Serial Number: G6866643	
Are you the original owner? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
Name: MICHAEL BREES		Date of Purchase: 12-1-09	
Address (no PO Boxes): 3801 Red MAPLE			
City: AMCLIA		State: OH	Zip: 45102
Phone (Daytime): 513-252-3804		Fax:	
E-mail Address: mbrees1@gmail.com			
<input checked="" type="checkbox"/> I would like to receive future e-mail updates from Remington.			
Please describe your problem: RIFLE FIRES WHEN SAFETY IS RELEASED, WITH OUT ANY PRESSURE ON TRIGGER. THE RIFLE ONLY DISPLAYS THIS PROBLEM IN COLD TEMP "55° OR LOWER". I HAVE VIDEO FOOTAGE OF THE RIFLE DOING THIS BOTH WITH AN EMPTY CHAMBER AND WHEN LOADED WITH LIVE AMMO. IF YOU CONTACT ME BY CALL OR E-MAIL, I WILL BE HAPPY TO E-MAIL THIS TO YOU. See ATTACHED.			
Ammunition Information:			
Manufacturer:		Type:	
Other (i.e. bullet weight/type, shot size, powder):			
Handload Information:			
Powder Used:		Powder Weight:	
Case/Hull Used:		Primer Used:	
Bullet Type/Shot Size:		Reloader Used:	
Firearms Care (Cleaning and Lubrication):			
Brand of cleaning solution used:			
How often do you clean the bore? (Months or Number of rounds)			
How often do you clean the action? (Months or Number of rounds)			
How often do you clean the trigger assembly? (Months or Number of rounds)			
Brand of lubricant used:			

DICK'S SPORTING GOODS

Mason, OH
(513) 770-4070

12/01/09 12:47 PM
RECEIPT EXPIRES ON 03/01/10

S-00173 R-6 T-1380 A-0123440 SALE

**** DUPLICATE RECEIPT ****

Your associate today is: Lynn

Customer Copy

047700855639 700SPSVARM/W 499.97

ITEM TOTAL 499.97

SUBTOTAL 499.97

TAX 32.50

TOTAL 532.47

VISA 532.47

ACCOUNT #: *****7164

AUTH# 045868

CHANGE DUE 0.00

Remington Arms Co., Inc.
Product Service
Legal Case #:6710

Case Information

RE#	Date Opened	Date Opened(PS)	Date Closed	Incident Date	Pre Lit	Lit	Obsolete
243961	10/20/2011	10/21/2011	10/21/2011				

Customer Information

Type	Business	First Name	Last Name	Street	City	State	Zip	Age	Contact
Reporter	NJ State Police		NJ State Police	1600 Negron Dr	Hamilton	NJ	08691		W 609-584-5000, x 5115 E lpp5104@gw.njsp.org

Incident Information

Claims	Codes	Repair Est.	Medical Treatment	Medical Status
PI				
PD	Cause:4038	Could Not Duplicate Concern		Unknown
S	Slam fires	Concern:1008 Fired on Bolt Closing		
C				

10/27/11 Per note with rifle, members of their TEAMS unit advised the armorer unit this weapon has slam fired. TEAMS unit also advised it does not slam fire everytime. This weapon is being returned to Remington for repair.cm

Firearm Information

Mfg.	Type	Model/Ga.	SKU	Serial	Bbl.	DOM
Remington	CF/BA	700/308 WIN	20000	G6663449	EB	10/1/2007
Date Purchased	Where Purchased	Accessories	Original Owner			
	LAWMEN SUPPLY		U			

CONCERN: SLAM FIRED

Ammunition Information

Mfg.	Type	Cal./Ga.	SKU	UPC	DOM	Mfg. Code
Federal	BTHP/168	308 WIN			5	
Concern	Other	Factory	Reload			
0:		Y	N			

Gold Medal Match

Other Products Information - None Defined

Settlement

Remington/700/CF/BA

Settlement	Release of Claims	Release Date	Reimbursement	Cash Settlement	Reim. Date APV	Cash Date APV
As a gesture of goodwill will replace TPA, clean and test fire at no charge						

Repair/Replacement Cost	Repair/Replacement Date
47.40	10/27/2011

10/27/11 Per Ilion, could not duplicate concern. As a gesture of goodwill and to restore confidence in rifle, will replace TPA, clean and test fire at no charge.cm

Examination[Remington/CF/BA]

Part	Sub-Part	Code	Comment
Examination	Examiner		B. TRAVIS
	Exam Date		10/21/2011
	Product Type		RF
	Action Type		A
	Assigned To		T. NAGLE
Cause	4038	Could Not Duplicate Concern	
Barrel	Description		26" 308 WIN PSS
	Date Code		EB
	Bore Plugged	False	
	Bulged	False	
	Fired	False	
	Fired while Obstructed		
	Muzzle/Crown Condition	Slightly Worn; Functioning	
Bolt	Firing Pin	Slightly Worn; Functioning	
	Shroud	Slightly Worn; Functioning	
	Face	Slightly Worn; Functioning	
	Handle	Slightly Worn; Functioning	
	Stop	Slightly Worn; Functioning	
Extractor	Condition	Slightly Worn; Functioning	
	Cut Condition	Slightly Worn; Functioning	
	Ex/Eject Test	False	
Locking	Block Condition	--Select--	
	Lug Condition	Slightly Worn; Functioning	
	Notch Condition	--Select--	
Overall	Exterior Condition	Slightly Worn; Functioning	
	Stock Condition	Slightly Worn; Functioning	
	Fore End Condition	--Select--	
Receiver	Condition	Slightly Worn; Functioning	
	Bulged	False	
Safety	Description		XMP SAFETY
	Function	Like new; Functioning	
	Sub-Assembly	Non-ISS	
Sear	Lift	--Select--	.007
	Notch	Slightly Worn; Functioning	
	Tests	Test Fired	False
Feeding Test		False	
Trigger	Condition	Slightly Worn; Functioning	
	Pull	--Select--	4#
	Altered	False	
	Sub-Assembly	X-Mark Pro	

Remington.

Factory Repair Instructions

(NOTE: Please print and complete this form, and then include it with your firearm.)

Model Number: 700		Serial Number: G6663449	
Are you the original owner? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
Name: New Jersey State Police		Date of Purchase:	
Address (no PO Boxes): 1600 Negrin Dr			
City: Hamilton		State: NJ	Zip: 08691
Phone (Daytime): 609-584-5000 ext 515		Fax:	
E-mail Address: lrp5104@njsp.org			
<input checked="" type="checkbox"/> I would like to receive future e-mail updates from Remington.			
Please describe your problem:			
Members of our TEAMS Unit advised the Armorer Unit this weapon has Slammed Fire. TEAMS Unit also advised it does not slam fire everytime. This weapon being returned to Remington Arms for repair.			
Ammunition Information:			
Manufacturer: Federal Premium		Type: 308 Win	
Other (i.e. bullet weight/type, shot size, powder):		Gold Medal Match	
168 GRAIN SIERRA MATCHKING BTAP			
Handload Information:			
Powder Weight:			
Primer Used:			
Reloader Used:			
could not duplicate concern. As a Good-will gesture and to restore confidence in rifle will			
(of rounds) replace TPA, clean + post fire			
(of rounds) AT N/C			
(of Number of rounds) # 260974			
Brand of lubricant used:			

G6663449

Model: 700



RE00243961

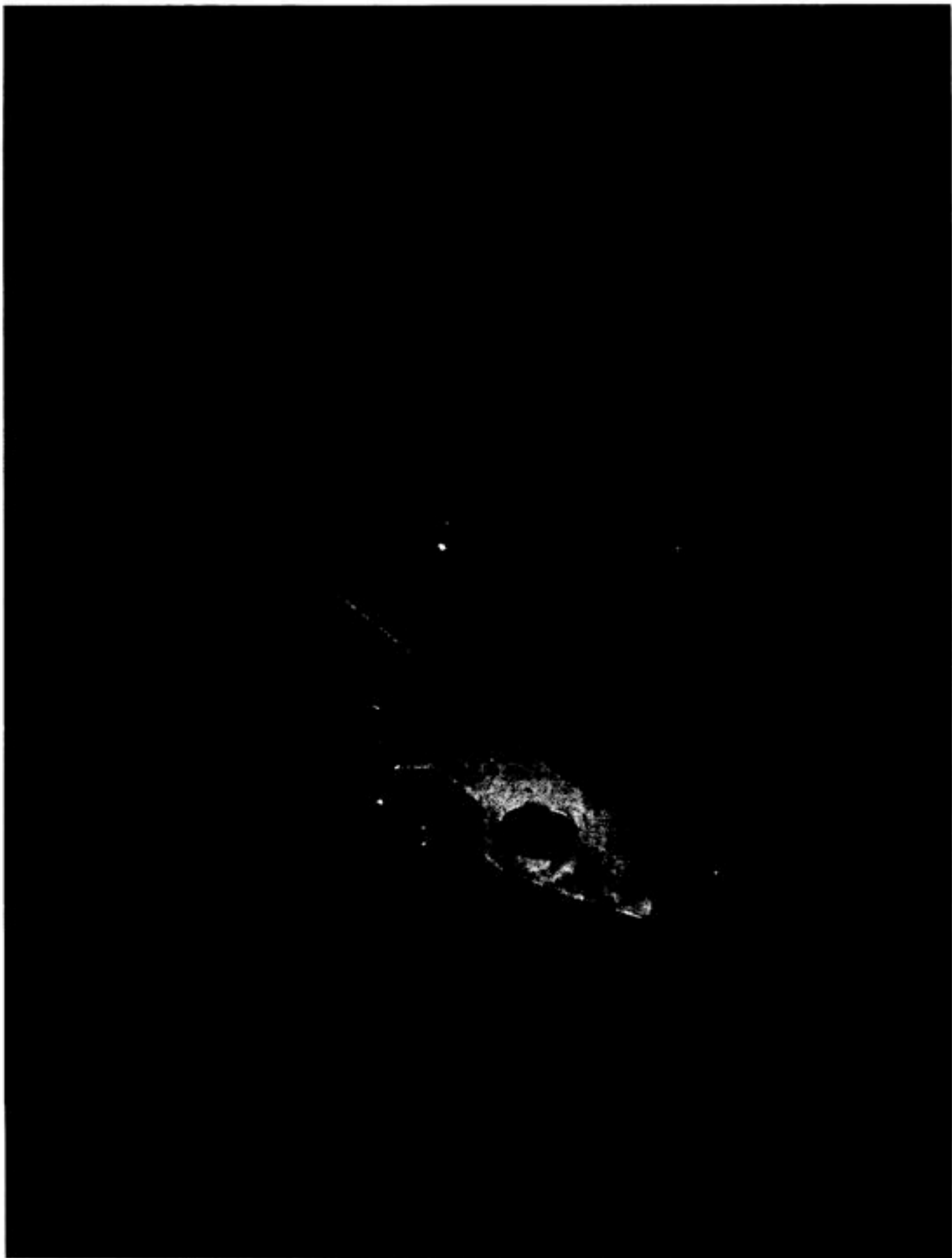
Contact Person: Sgt. N. Taljan #5104

Armorer Unit

RECEIVED
OCT 26 2011

BY:.....









NO. 14-0201

WILLIAM DAN EDGE and
JESSIE EDGE

VS.

REMINGTON ARMS COMPANY, INC.

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HOUSTON COUNTY, TEXAS

3RD JUDICIAL DISTRICT

AFFIDAVIT OF JOHN T. BUTTERS

THE STATE OF TEXAS

COUNTY OF

KERR

§
§
§

BEFORE ME, the undersigned notary public, on this day personally appeared JOHN T. BUTTERS, known to me to be the person whose name is subscribed below, and appeared and stated as follows:

"My name is JOHN T. BUTTERS. Most people call me Tom. I am over 21 years of age, have never been convicted of a crime and am fully competent to make this affidavit. The facts stated herein are true and correct and are based on my personal knowledge.

Knowledge of Firearms Operation and Design

I became interested in the operation and investigation of failures. There are no publicly offered courses that specifically teach firearms design. There are courses in gunsmithing and repair, but these do not address the kinematics of trigger mechanisms and safety devices nor do they address gun designs using advanced physics and applied engineering technology. I acquired my knowledge of firearms and trigger mechanism designs in the same manner as other engineers who focus their attention exclusively in gun design: by studying, modifying, generating innovative solutions to problems presented by firearms designs in general.

Both engineers who work for firearms companies, and I, started with similar academic backgrounds and interests. The studies that they pursued, and have been paid to pursue, I have largely performed on my own, aided over the last 15-20 years by materials obtained in discovery from firearms manufacturers.

As early as 1960, I was engaged in the design of fire control systems not only for my own use, but potentially for public sale. Among those firearms for which I designed and fabricated safety and firing mechanisms were the U.S. Springfield Model of 1903, the U.S. Enfield Model of 1917, the German Model 98, FN Model of 1950, and the Anschutz 1400 series for which I designed and built an electric trigger system. Numerous other minor projects involved studies of

EXHIBIT C

products of most major U.S. Manufacturers to include Colt, Smith and Wesson, Remington, Ruger, and Winchester. In February of 2000 I was awarded along with Mr. Jack Belk, a United States Patent for a passive automatic safety applicable to firearms with a sear and hammer mounted on a common trigger plate or base.

All of these efforts required that I address the safety, technical practicability, and economic feasibility of the existing designs and my proposed modifications and substitutions. The analyses and activities required the application of not only my academic background, but hands-on knowledge acquired by personal experience in the field, on the target range, and in my machine shop.

Firearms Related Patent

Trigger Safety Mechanism, United States Patent #6,119,387 issued 09/19/2000 to John T. Butters and Henry J. Belk.

Firearms Related Publications and Lectures

I have been invited to deliver numerous lectures to the American Custom Gunmakers Guild on the subject of firearms design but unfortunately I have not kept a record of all such activities. I have published the following articles that relate to firearms:

1. "Safety Aspects of Firearm Design", paper delivered at ATLA winter meeting in Puerto Rico on 25 January 2000
2. "Firearms Fire Controls and the Inadvertent Discharge", Journal of the National Academy of Forensic Engineers, December 1998, Vol. XV No. 2
3. The Gunmaker, The Journal of Custom Gunmaking, American Custom Gunmakers Guild, February/March/April 1998, Issue 82 and May/June/July 1998, Issue 83, "Evaluation of the Strength of Shotgun Barrels, Especially Older Double Guns"
4. The Gunmaker, The Journal of Custom Gunmaking, American Custom Gunmakers Guild, Summer 2001, Issue 95, "Evaluation of the Modification of Fire Controls of Custom Firearms"
5. The American Rifleman, The Journal of The American Rifle Association, September 1972 "How to Figure Lock Time"
6. "Forensic Engineering Preparation for Daubert/Kumho Challenges", Journal of the National Academy of Forensic Engineers, December 2003, Vol. XX No. 2

Knowledge and Experience With Firearms Use and Safety

I have a long history in firearms use and safety. I have been a competitive shooter for more than 60 years during which time I have won a number of awards. I first competed while serving as an officer in the U.S. Air Force on behalf of the 1971st AACCS Squadron. I have since been a member of many Texas State Rifle Association teams including the 1972 state championship team for big bore rifles. A photograph of a portion of my shooting awards is attached hereto amongst the exhibits to my affidavit. Included in my shooting competition and training has been many years of experience and usage of high powered rifles including the Remington Model 700. I cannot accurately calculate the many thousands of hours spent handling firearms. I have intimate knowledge of what it takes to contact a trigger in such a way to make a rifle fire. I have served on numerous occasions as Chief Range Officer, i.e. head of safety, for the Texas State Rifle Association during official competitions and as such I'm intimately familiar with safe as well as unsafe gun handling procedures. Further, I have been involved in the investigation of numerous cases where firearms have discharged without the trigger being pulled including those having to do with Remington M700 rifles as well as other Remington rifles utilizing M700 type trigger assemblies.

History of Firearms Related Expert Testimony

I have testified and/or given depositions in the cases listed below. Each of these cases involved a full investigation into the method of failure of a firearm many of which were Remington M700's and/or other Remington rifles utilizing the M700 trigger assembly. I'm a small business proprietor and I do not keep detailed records of prior testimony so the list below is constructed largely from memory with assistance of counsel.

McNeil vs. Remington, 13 CVS 21261 NC State, Mecklenburg Co. (M700 XMP death case, deposition)

Lewy vs. Remington, 836 F.2d 1104 (8th Cir. 1986) (M700 case with punitive damages awarded).

Campbell v Remington, 958 F.2d 376 (9th Cir. 1992) (M700 fire on bolt closing with extensive leg injury). In Campbell I was examined extensively on voir dire by Remington's lawyers and challenged as to my competency. The trial judge rejected Remington's challenges and allowed my testimony with the appeals court commenting as follows: "Remington next asserts that the district court wrongly admitted testimony from Campbell's expert John Butters that was inappropriately speculative and beyond the realm of his expertise....The transcript of the extensive voir dire which Butters underwent before testifying convinces us that Remington's contention is groundless".

Collins vs. Remington (M700 amputated leg with verdict over \$17,000,000 including \$15,000,000 in punitive damages)

Edge v. Remington (M700 XMP severe foot injury case in Houston County, Texas, deposition)

Williams v. Remington (Dallas County, Texas) (M710 with trigger connector)

Chapa v. Remington (M700 injury to 12 year old, deposition)

Jordan v. Remington (M700 death case, deposition)

Munoz v. Remington (M700 death case in Amarillo, Texas, deposition)

Anderson v. Remington (M700 death case in San Saba, Texas, deposition)

Muzyka v. Remington (M700 case)

Alekisch v. Remington (M700 case)
Barber v. Remington (M700 case involving death of 9 year old boy in Montana)
Montes v. Remington (M700 Texas state court) (deposition)
Matthews v. Remington
State of Wyoming v. Forrest Bromley
Jason Cotterill vs. Mossbert
Billings s. Glock
Rogers v. RSR
Tony Craig et al v. Taurus USA et al
Harry Carlson v. Freedom Arms Inc. et al
Cameron et al v. Olin, Winchester Repeating Arms and USRAC

Engineering Experience and Background In Quality Control

I have been a registered professional engineer since 1965 and was recently awarded a certificate for over 50 years of outstanding service to the state of Texas as a Professional Engineer. The certificate is attached along with my resume as an exhibit. Significant to this case from 1960-1974 my engineering duties included factory quality control and inspection of products to insure compliance with technical specifications. This is much the same type work as would be required at Remington to insure that the as manufactured models of the M700 XMP complied with all of the specifications mandated by the design documentation.

Materials Examined and Relied Upon In Reaching Opinions

I have inspected the M700 XMP rifle at issue and have reviewed all photographs and videos taken by Derek Watkins at both inspections he conducted. Photographs taken by Derek Watkins reveal the presence of excess sealant, a Loctite compound, on both the blocker screw and trigger face as well as on the engagement screw of the XMP trigger assembly. The presence of Loctite on the blocker screw was also evident during my examination of the rifle when viewed using optical magnification. The presence of this excess sealant on the blocker screw, trigger and engagement screw is evidence of failure to comply with appropriate design specifications and evidence of negligent manufacturing and inspection procedures.

I have reviewed numerous customer complaints by customers that included photographs of XMP trigger assemblies from users in the field who have reported to Remington that their rifles fired without the trigger being pulled. Included in this review were three video's wherein customers actually demonstrated their XMP rifle firing on safety release and firing on bolt opening without the trigger being pulled. All of these reports fall into what can be termed as similar incidents as more fully described below. All of the similar incident reports support and were considered in forming my opinions. Copies of similar incident reports reviewed and relied upon are attached hereto both in print and electronic form as provided by Remington. The photographs and video's referred to above are attached as exhibits to my affidavit.

With my assistance, all or virtually all of Remington's similar incident reports have been

compiled into a data base titled the Remington XMP Trigger Malfunction Data Base. Information gleaned from customer/user reports and product examinations carried out by Remington is incorporated into the data base. Included in the Remington XMP Trigger Malfunction Data Base is information from over 400 customers who complained their XMP Model 700 rifles fired without a trigger pull. Each of these reported malfunctions constitutes a potential similar incident inasmuch as the presence of excess and improperly applied Loctite in a M700 XMP rifle is the only known cause of a discharge in the absence of a trigger pull of a M700 XMP rifle that is otherwise in compliance with factory specifications. Each entry in the data base is supported by a report from the Remington product services department wherein Remington employees examined and then documented the condition of the rifle with a large number of the reports including photographs of the trigger assembly. The data from all of these customer complaints or similar incidents as well as gun exam reports has been compiled into what has been labeled as the Remington XMP Trigger Malfunction Data Base. Data compiled from actual product users together with analysis of such data is considered to be scientifically reliable. The Remington XMP Trigger Malfunction Data Base encompasses far more extensive data concerning trigger malfunctions of the XMP rifle than the very limited data compiled by Remington based on laboratory testing of something in the range of 20 rifles. My opinions are well supported by data from the Remington XMP Trigger Malfunction Data Base which is attached to my affidavit.

I have reviewed videos and photographs of XMP trigger assemblies returned to Remington by customers with the complaint that the rifle fired without the trigger being pulled. This review included watching a significant number of videos taken by Remington wherein it was demonstrated both that the trigger would move completely out of position allowing a fire on safety release as well as others where the trigger moved partially out of position resulting in a precipitous engagement situation. Whenever an engagement between trigger and sear of less than .0020 inch exists it sets up a situation where the rifle may fire upon bolt opening and/or release of safety as well as with a slight impact or even after a delay in time without further movement of the rifle. These were part of the investigation and lab studies done by Derek Watkins on behalf of Remington. Photos and videos from Remington's investigation and testing referred to above are attached as exhibits to my affidavit. I have compared the Edge rifle to the photographs and videos of other XMP trigger assemblies wherein the customers and/or Remington documented firings without the trigger being pulled and it is clear that the Edge rifle trigger assembly exhibits or is highly similar in that the same manufacturing defect of excess Loctite sealant found in the returned rifles is present in the Edge rifle XMP trigger assembly. Copies of relevant photographs and videos obtained from Remington as well as those of the Edge rifle are attached as exhibits to my affidavit both individually and in comparison form to the Edge rifle.

I have read and reviewed the testing procedures as well as manufacturing procedures for the XMP rifle which were applicable both before and after the manufacturing date of the Edge rifle. I have reviewed instructions for use of the Loctite sealants used in the Edge rifle and in other XMP rifles manufactured before April 2006. I am familiar with all operating characteristics of both the older M700 rifles as well as the M700 XMP rifles from materials and firearms reviewed in this case as well as many others in the past. Copies of relevant portions of

the Loctite warning advisories as well as manufacturing instructions are attached as Exhibits.

I have read and viewed via video the depositions of Derek Watkins, James Ronkainen and William Edge. These materials have been attached to or included as part of Remington's Motions for Summary Judgment or Motion to Strike me as a witness and they are incorporated herein by reference.

Copies of the various photographs and videos reviewed and whose content is relied upon are attached hereto.

Basis and Factual Support For Opinions

In reaching my opinions I utilized my many years of engineering experience with firearms design, operation and investigation of failures.

Excess sealant on the blocker screw and trigger has been documented by laboratory tests conducted by Remington to cause the rifle to fire without the trigger being pulled. Hundreds of customer complaints coming from customers with rifles manufactured according to the same manufacturing specifications also document that M700 XMP rifles with this condition will fire without the trigger being pulled. To date, Remington has been able to reproduce such malfunctions in the lab at temperatures ranging up to 45F. A large number of customer complaints with similarly manufactured rifles and visible excess sealant on the blocker/trigger interface have also been documented to fire without the trigger being pulled under a wider range of weather conditions. The mechanism causing the rifle to fire without the trigger being pulled involves the trigger being moved or pulled out of place by excess Loctite sealant between the blocker screw and its point of contact with the front face of the trigger. This may manifest itself via the rifle firing upon release of the safety, closing of the bolt, opening of the bolt, and from what is referred to as a jar off which encompasses any other small impact or vibration that may result in the delayed discharge of the rifle.

Each of these mechanisms of malfunction is essentially caused by the same manufacturing defect, that being that the trigger is pulled out of place from beneath the sear by the effects of the presence of excess Loctite sealant so as to result in less than the factory requirement of .0020 inch engagement or contact between the trigger and sear. This loss of engagement results in a precipitous condition of support for the sear which may allow the rifle to fire without the trigger being pulled on a random and unpredictable basis. Testimony and photographs from the deposition of Mr. Ronkainen, who was the original XMP engineering design chief, support my opinion that all firings of the M700 XMP rifle without a trigger pull that are related to excess sealant are basically caused by the same condition, i.e. lack of support for the sear by the trigger due to interference by the excess sealant with proper operation of the mechanism. Each and every instance where a M700 XMP rifle in normal operating condition fires without a trigger pull is most probably caused by interference with the normal and intended operation of the trigger assembly as the result of excess sealant preventing correct trigger function. Thus, each of these types of incident is highly similar in nature to that described by Mr. Ronkainen in his deposition.

In reaching my opinions I considered and rejected all other possible causes of the incident in question. Significantly, the only known manufacturing and/or design defect present in the M700 XMP series of rifles that will cause the malfunction with which we are concerned is the presence of excess sealant on the blocker/trigger interface as well as in the engagement screw/trigger space. Outside of this manufacturing defect there is no other known cause for a discharge in the absence of a trigger pull of a M700 XMP rifle that otherwise meets factory specifications as does the Edge rifle. I have therefore eliminated all other possibilities for the cause of the malfunction of the M700 XMP rifle that resulted in the injuries suffered by Mr. Edge.

Opinions

The Model 700 XMP rifle being handled by William Edge fired when the rifle was bumped by Mr. Edge as he removed the rifle from his truck. This firing was the result of a trigger malfunction caused by excess sealant deposited on the blocker screw and trigger face during the manufacturing process. This defect was a condition overlooked and improperly addressed during subsequent product inspections. It is my opinion that Mr. Edge did not pull the trigger at the time of his injury.

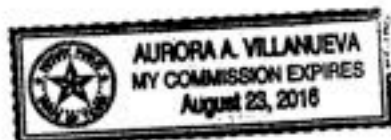
Remington failed to use reasonable care in the testing and manufacture of all M700 XMP rifles produced before April of 2014 as detailed below. These rifles were not tested under normal operating conditions as recommended by Loctite. The failure to test at normal operating conditions contributed to the failure to discover prior to delivery to customers that their rifles could fire without a trigger pull. Negligence in the manufacturing process via application of excess Loctite to the blocker screw and engagement screw resulted in deposits of this sealant causing interference with the critical trigger and sear relationship. Failure of Remington to properly inspect and detect the excess sealant which was clearly visible was negligent. There is no reason for any amount of Loctite to be present in the locations where it may cause interference with proper function of the rifle. In addition, Remington was negligent by failing to warn M700 XMP owners of the defect in the rifle. Many customer complaints, some including video evidence, were received by Remington documenting the propensity of the M700 XMP rifles to fire without the trigger being pulled and giving them notice of the problem. Each of these acts of negligence by Remington was a direct and producing cause of the Edge rifle firing without the trigger being pulled on December 23, 2011.

I have over 70 years experience with the handling of firearms for both field use and for competitive shooting and that includes the use of many high powered rifles such as the Model 700. I have participated in the investigation of accidental firings of Model 700 rifles for almost 40 years. Supporting facts for my opinion include the manner in which the rifle was being gripped or held in one hand by the forend by Mr. Edge at the time it fired and the fact that the trigger is protected by a trigger guard to guard against accidental contact. From the description given by Mr. Edge and the illustration provided by Mr. Edge at his deposition there were no foreign objects in the vicinity of the trigger which would have resulted in the trigger being pulled.

I disagree with the conclusion by Remington that the Edge accident could not have happened because of the weather conditions existing at the time. Remington takes the position that the M700 XMP rifle will only fire upon release of safety in certain limited weather conditions. This conclusion is contradicted by a significant number of customer complaints documenting firing without a trigger pull under a wide variety of weather conditions. The limited number of lab attempts to duplicate a fire on safety release as conducted by Remington would be considered by most any investigating engineer to be inadequate to support a conclusion that they cannot and do not occur under a wider range of circumstances. The lab tests of Remington also make no attempt to document the amount of trigger movement that would cause a dangerous displacement of the trigger to less than the factory standard of .0020 inch but still not enough to cause an immediate fire on safety release or a minor impact. Facts indicate however that the lab tests of Remington as well as large numbers of customer complaints document that the malfunction of the XMP trigger assembly occurs on a random basis under a wide variety of environmental and operating conditions. It is not surprising that the malfunction of the Edge rifle experienced on the date of accident could not be later duplicated as this is most often the case given the random nature of the elements causing the event. However, such failures have been well documented by customer reports and videos and lab tests conducted by Remington. All of the above factors support my conclusion that the existing environmental conditions as well as the defective condition of the Edge M700 XMP rifle trigger assembly resulted in the rifle firing in the absence of a trigger pull.


JOHN T. BUTTERS

SWORN TO AND SUBSCRIBED BEFORE ME on this the 20TH day of January,
2016.




Notary Public In and For the State of Texas

AFFIDAVIT OF ROGER DALE STRINGER

**STATE OF MISSISSIPPI
COUNTY OF FORREST**

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named Roger Dale Stringer, who being duly sworn does say:

My name is Roger Dale Stringer. I live at 638 East Baylis Chapel Rd, Columbia, Mississippi, 39429. I am a crew foreman on a powerline construction and maintenance crew for the local electric cooperative.

On June 11, 2011, my wife Kim and I had separated and were getting a divorce. Our two (2) sons, Justin (11) and Zachary (15) were living in our home with their mother. I was living with my parents while we sorted out the particulars. That evening, I took the boys out to eat to get them out of the house while she showed it to a prospective buyer. When the boys and I returned, she was gone so I hugged Zachary and Justin and told them bye and that I loved them.

About 20 minutes later, I got a hysterical phone call from my wife and the only word I understood was Justin. I headed back to my boys (2 ½ miles approximately) as fast as I could. Zac called while I was driving, telling me that Justin had been shot. When I got to the house, Zac met me in the carport and tried to keep me from going inside. I pushed past him, entered the house and saw Justin sitting upright in a chair in the living room. He died from a gunshot wound to the head.

Initially Zac told a version of what had happened that was obviously a lie. He told the police and me that Justin had accidentally shot himself with his own shotgun.

Later, after Justin's funeral, on Friday, June 17, 2011, Zac was arrested and charged with murder. We hired an attorney, Thomas Fortner, to represent him, and after attorney Fortner met



with Zac several times he advised Zac to tell the truth to the investigators about the night Justin was shot.

Zac gave a statement explaining that he and Justin had been sitting and talking in the living room. Zac was fooling around with his Remington Model 700 25.06 deer rifle, and Justin was playing with a dart gun he had gotten in the mail. Zac's rifle was loaded, he was sitting on the sofa, and Justin was sitting in a chair. As Zac got up to go to his room, he said he heard a "click" and then the gun fired. Zac swore and always has said that he did not have his finger on the trigger. The gunshot hit Justin between the eyes and killed him immediately.

Unfortunately no one believed Zac's story except his mother and his lawyer. I didn't believe him, and he was indicted and tried for murder. At the end of the trial the jury found him guilty of manslaughter, and he was sentenced to serve 10 years in prison.

After Zac went to prison I visited him as often as I could, and we continued to talk about what had happened. He always told me that he didn't understand how the gun had fired because he was sure that he did not have his finger on the trigger. I still didn't believe him, but I was beginning to wonder about it because Zac was so sure about not having his finger on the trigger.

Then in early 2015 I had a conversation with another hunter who told me about his rifle accidentally firing when he did not have his finger on the trigger. He told me that he had talked with other hunters who had had the same experience with other rifles. I started to do research and discovered that a lot of Remington Model 700 gun owners had experienced their rifle firing without their finger on the trigger, and that several people had died or had been seriously injured as a result.

That is when I told Zac's trial attorney about the issue. In early 2015, I contacted Remington with the serial number of the gun that killed my son Justin; Remington informed me

that that specific gun was subject to recall to replace the firing mechanism; Remington sent me a postage prepaid box to ship the gun to them with a caution not to allow anyone else to look at the gun.

In April 2014, Remington had announced a recall of all Remington Model 700 and Model Seven rifles with X-Mark Pro "XMP" triggers manufactured from May 1, 2006 to April 9, 2014. Remington determined that the XMP triggers could, under certain circumstances, **unintentionally discharge.**

In Christmas of 2008, I gave Zac a Remington 700 XMP rifle. The rifle that killed my son and imprisoned my other son contained the XMP firing mechanism. This is the mechanism that has a tendency to fire without anyone touching the trigger.

The rifle in this case is still locked in the evidence vault at the Marion County Circuit Clerk's Office. The Circuit Court Judge has ordered that no one is to handle the rifle without the Court's approval.

I now believe my son. I believe that the gun fired without my son even touching the trigger. None of us knew about this faulty firing mechanism: neither the crime lab expert, the pathologist, the law enforcement officers, nor Zac's lawyer. It was after the Supreme Court affirmed Zac's conviction that Remington began the voluntary recall of Remington Model 700 XMP rifles. Also, it was after Zac's conviction that records involving several Remington lawsuits became unsealed revealing the multitude of cases involving Remington Model 700 rifles that fired without a trigger pull.

I truly believe that if the jury had been presented with the evidence of the many accidental firings of this type of Remington rifle in this case, the jury would have had real evidence that my boy was telling the truth and that this really was an accident.

This the 28th day of February, 2017.

Roger Dale Stringer
ROGER DALE STRINGER

Sworn to and subscribed before me this the 28th day of February, 2017.

(Notary Seal)

Laura A. Wilson
NOTARY PUBLIC

My commission expires:



**STATEMENT OF SPECIFIC FACTS WITHIN PERSONAL
KNOWLEDGE OF PETITIONER**

**STATE OF MISSISSIPPI
COUNTY OF FORREST**

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the jurisdiction aforesaid, the within named Zachary Stringer, who being duly sworn does say:

My name is Zachary Stringer, date of birth March 28, 1996. My social security number is

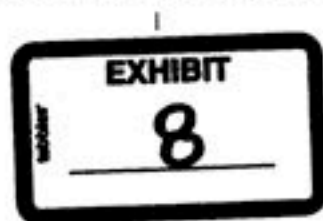
██████████ I am 20 years of age, and I live in Columbia, Marion County, Mississippi.

I was indicted for murder as a result of the shooting death of my little brother, Justin Stringer that occurred on June 11, 2011. At the time I was 15 years old and Justin was 11 years old. Justin and I were at home talking about hunting and I went to retrieve my Remington Model 700 hunting rifle. When I got up from the couch to put the rifle up, I heard a click, and the gun went off and shot Justin in the head.

As soon as the shooting happened I called my parents, and one of them called the sheriff's department. When the deputies arrived I first made up a story about how Justin had accidentally shot himself. After Justin's funeral, six (6) days later, the sheriff's department arrested me and charged me with murder.

My parents hired attorney Thomas Fortner to represent me. When Mr. Fortner came to see me, I told him the truth about what really happened. The rifle that killed Justin was a Remington Model 700 XMP bolt action rifle used by me for deer hunting. My parents had given the gun to me as a Christmas present in 2008. I had never had any problems with the rifle before the night Justin was killed.

Mr. Fortner advised me to make a statement to the detectives investigating the case and to tell them the truth. I did what Mr. Fortner advised me and told them what I had told Mr. Fortner.



I told them that I did not have my hand or finger on the trigger of the rifle when it fired, killing Justin. I was just getting up from the couch, with the rifle in my hands, when I heard a "click" and the rifle fired right then. The bullet from the rifle hit my brother in the forehead and killed him.

I first lied about this to the detectives and to my parents because I was afraid that my parents would be so mad at me and would not love me. I loved my little brother, and I never would have hurt him. I knew all about gun safety, and I knew that I did not have my finger on the trigger of the rifle when it fired.

My dad didn't believe me about not having my finger on the trigger when the gun went off. He testified against me at my trial. I was found guilty of manslaughter by the jury, and the judge sentenced me to 10 years in prison and 5 years post-release supervision. I went to prison.

My dad and mom got divorced during all of this, and my mom remarried and moved out of state. My dad regularly visited me in prison, and my mom visited when she could and we talked on the phone a lot.

Dad and I kept talking about what had happened, and I always kept telling him that I didn't know how the gun had fired because I did not have my finger on the trigger when it happened. Finally, on one visit, Dad told me that he had learned that for years there had been problems with some Remington rifles that would unexpectedly fire even though the trigger had not been pulled or touched. He started talking to Mr. Fortner, and they contacted the Remington Company to see if my rifle was the kind that had those problems. They gave Remington the serial number on my rifle and were told that my rifle was subject to recall and refitting to fix the firing mechanism. The recall specifically stated that "some Model 700 and Model Seven rifles with XMP triggers could, under certain circumstances, **unintentionally discharge**." Dad told me

all about this and that Mr. Fortner had gotten the judge to order the clerk not to let anyone handle the rifle without the judge saying it was all right. Remington wanted us to send the rifle to them and not let anyone else see it. As far as I know, the rifle is still in the circuit clerk's evidence vault at the Marion County courthouse.

During my trial the ballistics expert from the Mississippi Crime Lab testified that the gun couldn't possibly fire without pulling the trigger. The district attorney told the jury that I had to have pulled the trigger for the gun to have fired. Both of my statements to the detectives were given to the jury. I was found guilty of manslaughter.

During my trial no one told the jury about the problems with my Remington Model 700 rifle and the fact that the rifle could fire without the trigger being pulled or touched because no one knew about it. My dad found out about the defect and recall of the rifle after the Supreme Court affirmed my conviction and sentence.

This the 2nd day of March, 2017.


ZACHARY STRINGER

Sworn to and subscribed before me this the 2nd day of March, 2017.

My commission expires _____



NOTARY PUBLIC

AFFADAVIT OF RICHARD BARBER IN SUPPORT OF MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE

I, RICHARD BARBER, hereby declare as follows

I am over the age of 18 and reside in the state of Montana. I am competent to testify to the matters set forth herein based on my own personal knowledge.

OVERVIEW

I am generally recognized nationally as an authority involving subject matter related Remington bolt action rifles. A Google search of my name, Richard Barber plus Remington, or any combination thereof, will reveal many sources of supporting information to show my level of dedication and service to this issue and the extent my research and insights have been relied upon by the national news media and trial attorneys to advance public knowledge of functional deficiency noted herein but including utilized as litigation consultant in past Remington bolt action rifle litigation. I came to learn about the Stringer incident by his father, Roger Dale Stringer. Mr. Stringer contacted me in March of 2016 seeking historical information and details involving inadvertent discharges with Remington bolt action rifles. Mr. Stringer seemed to be seeking answers to attempt to make sense of a fatal incident involving a Remington rifle that resulted in the death of his eleven (11) year old son, Justin Stringer, on or about June 11, 2011. His other son, Zachary Stringer, (Zach) was fifteen (15) years old at the time of the incident. Zach was charged and prosecuted for the deliberate "murder" of Justin. After Zach's arrest in 2011 and after the trial in 2013, the Jury failed to return a requested murder conviction. Zach would be convicted on a reduced charge of manslaughter involving the death of his younger brother. This Declaration is to outline unknown facts and details involving the potential of inadvertent discharges involving the subject Model 700 rifle not known at the time of the investigation or 2013 prosecution. This information contained hereto was not publicly available at the time of the investigation, prosecution or any appeal prior to October 2015, to the best of my knowledge (attachment (1) Release Letters)

Prior to this time, (October 2015) all relevant information related to functional and design deficiencies in the Model 700 rifles (collectively) have historically been bound by overly broad protective orders and confidentiality agreements as a pre-condition of production in civil litigation –therefore the information contained in the following paragraphs and the following Public Justice website link were not available for the defense of Zach Stringer prior to his conviction. As evidenced in the included attachments, over the course of many years I have worked to unseal information involving functional and design deficiencies in Remington rifles – not always with initial successful result –but my objective to make this information public have remained persistent in eventually achieving this personal long standing objective. The following chain of events will outline the extreme measures Remington has undertaken to ensure this information would not have been readily discoverable by Zach Stringer unless his parents would have engaged in civil litigation against Remington. By design, the use of these protective orders and use of overly broad confidentiality agreements is fully intended to restrict this information from public inspection and has the effect to ultimately prevent the public and victims like the



Stringers from having a fair hearing (or defense) before the courts unless executing such an agreement prior to being produced in civil litigation. The only way Zach Stringer could have mounted any kind of reasonable defense in 2013 would have been to engage the services of a civil litigation attorney to conduct discovery on his behalf without the typical secrecy agreements of a condition of production (attachment (2) Barber v. Remington letters regarding secrecy)

As late as last year, 2016, my public document disclosure efforts would finally bear fruit and only then would Remington's own telling internal documents become the rightful property of the public. Only now may the investigators, prosecution and possibly a Jury of Zach's peers finally have the ability to review this newly discovered evidence and reevaluate the compelling documented information before Zach could ever hope to mount a proper defense to show what he claimed happened the evening Justin was killed –the rifle just went off by itself – beyond a reasonable doubt, most likely happened the way Zach described the unexplained event resulting in the death Justin. Only now can the unanswered and troubling questions about Justin's untimely death be answered, in part, through the revelation of host of recently disclosed evidence as a result of the blanket seal finally being waived by Remington through my insistence. Only now can this evidence shed light on the tragic events of June 11, 2011, to only now permit Zach to show a Jury what has since been discovered since his original 2013 trial. The newly disclosed documents, in limited production, can now be viewed at www.remingtondocuments.com¹

I also learned through my independent investigation at no time did anyone appear to negatively question the integrity of the Model 700 rifle involved in the death of Justin Stringer. The very foundation of the Stringer prosecution and previous trial outcome hinged on a misconceived notion and patently false premise, the incident Model 700 rifle could not, would not and did not fire without intentional and deliberate trigger contact to initiate the fatal discharge that claimed the life of Justin Stringer. At least this is what the prosecution told the Jury because no evidence was available to contradict or challenge this false assertion at that time. We can now irrefutably demonstrate through the revelation of only limited quantity of evidence at this time to show what the prosecution believed and conveyed to the Jury is simply not the case as it relates to Justin's death

Initially I was reluctant to become involved with this case after deciding to retire as a litigation consultant in any future Remington bolt action rifle litigation. For personal reasons, I just want to close this chapter in my life and made the decision to retire in February of 2015. Before this time, my area of expertise largely involved document and case development analysis to include detailed historical information involving Remington rifles, as in this instance, related to individual injury and wrongful death claims. As a consulting expert, I would be provided mass litigation discovery for my analysis to advance theories in individual litigation cases. This type of information was produced by Remington to plaintiffs for my independent analysis to further develop future discovery requests in litigation against Remington. The Stringer incident is not random or unique. These type of accidents occur on an annual and persistent basis. My review and analysis of Remington's internal documents on a host of subjects is too numerous to mention

¹To date, only limited portions of my personal and professional research files have been, thus far, posted online by the public advocacy group, Public Justice, at the above web address. There are still hundreds of thousands of files now available for public inspection no longer under seal or bound by confidentiality agreements as a precondition of production in previous litigation.

specifically, however, my research review of Remington internal documents ranges in the millions of pages. Briefly, I have personally reviewed documents discussing among other things, proposed design development, prototype design and function testing and implementation of fire control design changes. My review of Remington's internal documents has also revealed past fire control development programs that has not yet been implemented into production rifles that were once developed to mitigate the potential for foreseeable safety concerns and liability exposure Remington has identified in its Model 700 product line –decades old programs. This would include proposed product safety recalls that have been abandoned in favor of economic consideration and further liability exposure, including recommended Remington engineering design change modifications to mitigate the potential for safety related malfunctions in a host of Remington products. To a lesser degree this includes the rifle subject to the Stringer incident fitted with the X-Mark Pro trigger mechanism. (XMP) The XMP (Model 700) litigation is still somewhat in its infancy but especially at the time of my retirement. My separation from Remington litigation then restricted and prohibits my further review of any recent discovery production since that time to include more recently produced discovery currently bound by protective orders strictly prohibiting dissemination of documentation involving the XMP fire control system. Since my retirement, I am no longer willing to be bound by any further protective orders as any condition for my further involvement with future Remington bolt action rifle litigation, thereby, remaining part of the problem and not part of the ultimate solution to break the cycle of injury and death through education of well documented facts contained within the pages of Remington's own internal documents. Since my short lived retirement, I have declined every single request for my participation as a litigation consultant with the exception of the Stringer investigation –and at that, to date, only on my own time and terms.

To the best of my knowledge, Mr. Stringer contacted me seeking my thoughts and answers to his questions into what he came to suspect involved a form of deficiency in the Remington rifle or to what extent, if any, any known or suspected deficiency may have been directly causative to the fatal incident involving his young boys –after all, it was apparent to me all Mr. Stringer wanted was to learn the truth involving the death of his younger son as it related to the alleged actions of Zach involving Justin's death. This never made any sense to him why Zach would directly or indirectly harm his younger brother. After careful consideration, I agreed to undertake this investigation on a no charge basis. To be clear, I have no vested financial interest in the outcome of this case one way or another. I will say, however, had I unearthed anything that would have caused me to even remotely believe Zach Stringer had any intent to harm his brother in the commission of a crime, I would have immediately abandoned my investigation. Had this been the case or if I would have developed any doubts in my own mind about this fatal incident, based on any information, belief or through the revelation of any evidence I have reviewed to date, I would have immediately ceased all activity in this case. My only hope is to eventually see justice served here through the revelation of newly developed facts, insight, and evidence surrounding this tragic incident. Since I am not duty bound in any financial capacity, I am now acting as an advocate on behalf of the Stringer family to advance this case based on my understanding of the evidence I have reviewed to date involving the events leading up to Justin's death and the prosecution of Zach Stringer. I am prepared to move heaven and earth to ensure Zach finally has his rightful day in Court with any and all new information, insight and evidence I have relied upon to advance my developed understanding of this case –even if this is only accomplished in the court of public opinion should Zach be denied to have his day in Court with all the facts

finally known that could not have been revealed in his original 2013 trial through no fault of anyone at that time. This effort on my part will be my attempt to assist Zach to reinstate his standing in this community and rights not currently available to him presently as a convicted felon. In the interest of justice now being served, demands the truth and unknown facts outside the scope of knowledge of all previously involved finally be revealed through a fresh perspective of an objective, independent and outside observer without any emotional bias or vested financial interest in the final outcome of the instant case.

MY PRESCREENING EVALUATION OF THE STRINGER INCIDENT

In the beginning, I was skeptical and cautious. I would begin my pre-screening evaluation process to determine the facts in this case warranted further review. This was accomplished entirely through the embodiment of the established record involving the Stringer incident. My pre-screening evaluation process included a host of initial interviews I have personally undertaken to assure myself beyond a reasonable doubt (in my own mind) I was not aiding a convicted felon to escape justice. I started this process with a clear and concise understanding with Zach's father, all of my questions would be fully and truthfully answered by family members without hesitation or embellishment. I made it perfectly clear at the onset of my investigation had I determined any inconsistent statements or if any discrepancies were revealed throughout my analysis of this record, I would immediately cease all further activity in this case. I also instructed Mr. Stringer to inform Zach's defense attorney, Tom Fortner, to cooperate and to fully comply with my detailed information requests as a precondition of my involvement with this case.

I initially requested a host of materials involving the official Stringer investigation to include, the incident scene photographs, police reports, witness statements; and including all first responder's written reports and/or noted oral statements to investigators. This also included an audio recording of Zach Stringer's interview with detectives. My information requests would reveal at least two (2) separate accounts of the incident by Zach Stringer. Mr. Stringer informed me at the onset Zach initially failed to disclose an accurate account of events leading up to the death of Justin. After collecting and digesting this information, I would advance my knowledge by requesting a litany of materials contained in the pre-existing record of this case. These materials included toxicology reports, crime lab testing reports on the subject rifle and so on. After the pre-screening evaluation passed my initial scrutiny, lastly, I would review and digest the entire trial transcript to formulate follow up questions subject to my later interviews of investigating detectives, crime lab technician, Lori Beall (who physically examined the subject rifle) and including the medical examiner, Erin Barnhart, who testified at the Stringer trial.² It is only through the embodiment of my analysis of the entire record in this case I now offer my insight and opinions to afford Zach the ability to challenge the circumstantial evidence resulting in his 2013 conviction.

I also conducted interviews of the investigators, Jamie Singly and Lee Cotton to determine if for myself if any evidence existed to establish motive or any physical material evidence exists, withheld from the trial suggesting Zach Stringer had any intent to harm his younger brother.

² Erin Barnhart has since left her position as Medical Examiner (M.E.) in Mississippi. I later located Dr. Barnhart in Texas and contacted her to conduct my interview about her testimony during the Stringer trial.

before the event or at the time of Justin Stringer's death. Through my collective interviews with investigators, my finding was conclusive in this fact, showing there was no documented material evidence exists indicating or suggesting Zach Stringer had motive, intent or willful premeditated design to kill Justin Stringer. I also followed up with Lori Beall, the state crime lab technician (crime lab tech) who performed function testing on the subject Model 700 rifle to determine the specific methods of testing on the incident rifle on several occasions. These interviews were to learn, among other things, to establish to what extent, if any, the fire control system itself in the incident rifle was ever physically examined by the crime lab to determine if any identifiable defects, wear patterns, binding or tolerance deficiency conditions were identified. I also sought to learn and establish if the fire control system itself was found to be within the prescribed manufacturing and design limits established by Remington to be maintained during the manufacture process. I learned through these interviews, I believe, no such evaluations or any measurement characteristic of fire control components were conducted or were identified in the Stringer incident rifle. The drop testing of the incident rifle by the crime lab tech, Lori Beall, produced no observable abnormalities or jar-off malfunctions with the subject rifle during testing.³ I was also interested to learn if the crime lab relied upon Remington technical service or any Association of Firearm and Toolmark Examiners (A.F.T.E) resources (retired Remington employees) in any way, directly or indirectly, were involved in the crime labs multiple examinations surrounding the reliability, safety, and/or, function drop testing of the incident rifle. Again, my repeated interviews suggest this has not been the case and I have been told Remington, nor any outside resource was ever contacted or involved in any capacity that I have been able to identify. This was my attempt to establish if anyone contacted Remington about the subject rifle and was told the subject rifle was "safe" in its current configuration and state at the time of the incident. As I will show through the limited evidence produced herein, we now know there are identifiable or highly suspected product deficiencies showing the real potential for inadvertent discharges with the XMP fire control truly exist today that was outside the scope of knowledge and not identifiable by anyone previously involved in the early testing and examination of the Stringer incident rifle.

I would finally conclude, this case was entirely advanced exclusively on circumstantial evidence, based in large part on the un-assumed belief - a reputable bolt action rifle such as the Remington Model 700 just cannot, would not and did not possibly fire without the trigger being pulled as the prosecution impressed upon the 2013 Jury. Apparently (at the time) Zach's father, Mr. Stinger, also did not believe the Remington rifle involved in this incident spontaneously discharged without a trigger pull as Zach initially told everyone. Mr. Stringer would be compelled by the prosecutor to testify at the trial to this inaccurate assumption. Mr. Stinger is not a firearm expert nor was he qualified to answer hypothetical questions outside the scope of his direct knowledge as a layman. The only testimony Mr. Stringer was qualified to render at trial, up until the evening of June 11, 2011, to the best of his knowledge, the subject Model 700 rifle

³ I observed the crime lab tech, Lori Beall, subjected the rifle to drop testing heights closely approaching what is considered to be "abusive testing" by a world leader in firearm testing, H.P. White Testing Laboratory. The incident rifle should not have undergone this type of abusive drop testing without the knowledge and consent of Zach Stringer to ensure the integrity of the evidence was preserved through measurements, photographs or radiographs that should have been conducted prior to any destructive testing being performed by the Mississippi Crime Lab. It is my understanding Zach did not have a qualified firearm expert present at the time the State subjected the incident rifle to abusive drop testing heights approaching destructive testing distances of 36 inches (attachment (3) H.P. White Drop Testing Guidelines and Parameters)

had not exhibited any forms of safety related malfunctions prior to the evening of the fatal incident. Mr. Stringer was asked and answered questions at trial and would appear to be compelled to offer prejudicial testimony outside the scope of his direct knowledge as a layman. As evidenced by the record, apparently, no one had reason, cause or belief to seek any information involving the long history of safety malfunctions in the Remington Model 700 bolt action rifle, in light of Zach's steadfast claim "the rifle just went off." Today I am told nobody had reason or belief to have sought any information from a host of possible resources, like myself, other experts in the field, news articles, Remington or A F T E resources to determine if Zach's claim was remotely plausible, one way or another, or to prove or disprove his unexplained unintentional discharge claim with the Remington rifle – nor did anyone make any attempt try to determine if any previously known or suspected mechanical causes may have permitted, through mechanical failure, an spontaneous discharge without a trigger pull to initiate the unexplained unintentional discharge as Zach in some detail described to investigators and his father. Simply put, nobody believed him. It is apparent in light of the lack of evidence that existed then, indeed, it might have just been an easier proposition for the public and the district attorney to believe, absent any evidence suggesting otherwise and insist Zach murdered his brother in cold blood, in light of the fact, Zach initially attempted to mislead investigators surrounding the details of the incident.

Another issue clouding the search for the truth in the Stringer case, the investigation and testing of the Stringer incident rifle was not conclusive in facts surrounding certain well documented propensity for malfunctions in the Remington Model 700 rifle at the time of Justin's death. In all my interviews to date, it has been alleged nobody contacted Remington or anyone like myself who might be associated to Remington bolt action rifle litigation with any kind of specialized knowledge. While the prosecution has had at least two opportunities to have the subject rifle fully examined and tested by the prosecutions choice of expert witness, the defense to date has not yet been afforded even a single opportunity to examine, inspect or test the subject rifle – as a result, up until now Zach' defense has been forced to rely exclusively on the prosecutions expert witness' examination and diagnosis of the incident rifle. This has deprived Zach to have any rightful opportunity to rebut the prosecution's witness involving the ultimate integrity, reliability or safety of the subject rifle. I would also come to learn the fire control system involved in the Stringer incident to be identified as the XMP fire control system. The XMP fire control is a much newer design that was developed by Remington, at my insistence, to address "a continual body of litigation," to include a long history of injury and deaths associated to the previous Walker fire control system. The XMP was released to production in the Model 700 in 2006.⁴ It would appear at first glance, nobody questioned the integrity of the Model 700 rifle throughout this investigation. This area of research was apparently overlooked or advanced by the defense throughout the prosecution also. The record is clear, never once was the integrity of the Model 700 rifle brought into question during the 2013 trial by Zach or his defense counsel – other than the prosecution propounded a now known patently false proposition to the Jury, portraying the incident rifle to be a safe and reliable rifle without rebuttal or challenge at that time. I believe had the information contained herein been available, the prosecution may have

⁴ As I will show in a later paragraph, I was once involved – at arms length – with Remington in the design development and testing of the XMP fire control system. I acted for I considered to be the greater good of the public as an outside consultant to eventually compel the company to develop a new fire control to replace the functionally deficient Walker fire control system.

even possibly or altogether reconsidered advancing murder charges against Zach Stringer for the death of his brother. Even if he did pursue this cause of action, the evidence that exists today more than likely would have resulted in acquittal of the charges altogether had the Jury been able to see any of the evidence to support Zach's claim of unintentional discharge. This will just not be the case if Zach Stringer, I am hopeful, is granted a new trial based on the newly discovered evidence I bring forth on his behalf to set the record straight.

BRIEF SUMMARY OF HISTORY OF MALFUNCTIONS WITH THE MODEL 700 RIFLE

The Model 700 rifle has a long history of malfunctions that has spanned decades resulting in un-commanded discharges, resulting in hundreds of indescribable deaths and injuries as in the Stringer incident. This cycle of injury and death has persisted long before the death of Justin Stringer. This well documented fact is well established by news media articles and documentaries involving this issue.⁵ (See CNBC Documentary *Remington Under Fire* Cir. 2010 <http://video.cnbc.com/gallery/?=1616222630>) As shown in the above link, this information, to include information related to the ultimate safety and reliability of the Model 700, among other model rifles that have employed the Walker fire control system. This information has been systematically concealed from public inspection through the use of overly broad "protective orders" and/or "confidentially agreements" at Remington insistence for decades until most recently. This is evidenced by a 2015 update to the previous 2010 CNBC documentary cited above talking about court secrecy as it relates to the instant case. In this more recent update to the original 2010 CNBC documentary, CNBC establishes the extraordinary measures Remington has undertaken, to not only conceal this self-impeaching information from the public disclosure but to conceal this telling information showing what Remington claims in its public statements about the safety, security and functional integrity of the Model 700 is just not supported in any capacity by the companies own internal documents. In 2015, CNBC, in the updated story - *The Reckoning*, CNBC offers further insight into court secrecy and the use of overly broad protective orders and confidentially agreements, by design, to conceal information from the public and the courts. (See CNBC Mini Documentary - *The Reckoning* Cir. 2015 <http://video.cnbc.com/gallery/?video=3000463701>)

I will say in all candor and fairness, from the onset looking into this matter, it seems entirely plausible to me, this evidence could have most certainly been overlooked or altogether ignored when it was determined the newer XMP fire control design (in the Stringer rifle) was in fact different in design and construction than the previous Walker fire control system outlined in the above CNBC documentaries. As I sit here today, I believe I could honestly state I would have declined this case myself in 2011 based on the information and evidence that, as an insider to litigation discovery and related documentation that existed at that time. However, I strongly believe the prosecution's expert witness, Lori Beall, would have been able to make this easily identifiable distinction between the two (2) different fire control designs when she examined the Stringer incident rifle in 2011 and/or again in 2013. With that said, it stands entirely realistic in my mind, no question, had the fire control in the Stringer rifle been identified as a different fire control design, other than the Walker fire control system, there would be no reason for anyone to

⁵ As an authority of this subject matter, my research and insights were heavily relied upon by CNBC in the development of the 2010 documentary *Remington Under Fire*. If it pleases the Court, please see the documentary at the above link.

question, suspect or conclude the XMP was susceptible to similar forms of safety related malfunctions as the obsolete Walker fire control design as Zach claimed. As I have already shown, this information could not have possibly been known or discovered at that time until years after the original Stringer trial.

Throughout my review of Stringer trial transcript, I observed verbiage in the record that struck me as quite curious at the Stringer trial. It would appear to me, I highly suspect, the prosecution knew or would possibly come to discover something about the functional deficiencies in the Model 700 on the eve of trial. This is evidenced by the fact the subject incident Model 700 rifle was returned to the crime lab for further evaluation and potential abuse testing roughly one month before the trial –roughly two (2) years after the fatal incident when within mere weeks the district attorney, Hal Kittrell, decided to advance criminal charges against Zach Stringer for the deliberate murder of Justin. This reevaluation would only make sense if to me if the prosecution wanted to ensure no surprises might manifest during the rapidly approaching trial questioning the safety or the integrity of the subject Model 700 rifle. Another glaring indicator I noted from my specialized review of the record in this case, further supporting my developed belief, suggests to me the prosecution either knew or would come to learn something about history of malfunctions with the Model 700 rifle. I noted the use of the word “misfire” extensively used by the prosecution throughout the trial. I found this term to be very suspect, primarily because the word “misfire” is an inaccurate term that was once coined by the news media to describe a host of malfunctions specifically with Remington rifles. This term is decade's old terminology once used to inaccurately describe the host of spontaneous discharge malfunctions (without a trigger pull) associated specifically to Remington bolt action rifles. The first news article that appeared to coined this phrase was reported in a 1994 Business Week article –*Remington Faces a Misfiring Squad*. I will attest to the historical accuracy of this article as one of the most comprehensive articles of that era detailing litigation history and a secrete internal program to develop alternative safer fire control systems to replace the Walker fire control or the Model 700 altogether –depending on who you believe. This subject matter is well outlined in the Business Week article other than the catchy name –“misfire” –to attract attention to the history of malfunctions associated to and inherent in the Walker fire control system.

In fact, from a technical standpoint, if the prosecution's expert witness, Lori Beall, were to be asked this question today, I believe she would be hard pressed to disagree with me that the use of the word “misfire” would be generally classified as an ammunition malfunction and not a technically accurate term used to describe anything related to inadvertent discharges as it relates specifically to Remington bolt action rifle malfunctions. I believe this exact verbiage used to discuss malfunctions at the Stringer trial, specifically with Remington rifles, would not be used unless someone was more than likely exposed to the above news article or information inaccurately describing malfunctions specifically with the Remington Model 700 rifle featured in a 1994 Business Week article as a misfire. This article outlining the history of Remington bolt action rifle litigation and a very significant jury verdict against Remington at that time is, to the best of my knowledge, the first news article I am aware of that inaccurately coined the phrase “misfire” to describe the host of spontaneous discharge malfunctions (without a trigger pull) with the Remington Model 700 or the host of other model bolt action rifles that employ the Walker fire control system. (attachment (4) Business Week *Remington Faces a Mis-Firing Squad* Cir. 1994)

Overview: The two (2) primary talking points outlined in the immediate above paragraphs, the subject Stringer incident rifle being returned to the crime lab on the eve of trial for reevaluation and testing, roughly one (1) month before the trial, and the use of the word "misfire" extensively used throughout the trial suggests to me the prosecution may have known, come to learn or suspected something about the historical propensity of the rifle involved in the Stringer incident, a Model 700 rifle, to malfunction in a manner exactly the way Zach Stringer described the event shortly after the death of his brother. The high profile 2010 documentary, *Remington Under Fire*, has been circulated world-wide and is still circulated by CNBC periodically. This should have been something within the scope of knowledge of anyone involved in the analysis of firearms –to wit –a certified Association of Firearm Tool Mark Examiner employed as a state crime lab technician tasked with the physical testing and identification of firearms in a professional capacity. It seems unimaginable to me someone acting in the capacity of a firearm expert would not at some point come to learn, hear or become aware of the CNBC *Remington Under Fire* Documentary to stay abreast of information related to their primary area of expertise. The crime lab technician, Lori Beall, should have known or at least heard something about the CNBC 2010 broadcast through her resources, especially within three (3) years leading up to the Stringer trial, even if it was later determined the fire control in the Stringer incident rifle was other than the fire control system subject to the 2010 CNBC documentary. In any event, I am convinced somebody came to learn or know something about this issue, but to date, we have not determined to what extent this knowledge of malfunctions with Remington rifles was known and by whom.

While I full well admit in the interest of being candid, the above outlined evidence is anecdotal at best. However, I see no real distinction when the evidence is looked at objectively and in the context to the body of circumstantial evidence used to advance the prosecution and convict Zach Stringer, with the exception of this one defining caveat – as my strongly suspected insight suggests –had the prosecution had any real or suspected knowledge of a potential deficiency in the incident Model 700 rifle, the prosecution would have borne an obligation and a potential ethical burden to disclose this information to the defense before the trial. Had this chain of events failed to occur, as I suspect, I believe this failure at worst and oversight at best should now be questioned and now result in a mistrial against the accused and warrant a new trial –even if it was determined the fire control in the Stringer rifle was not the suspect Walker fire control –affording Zach an opportunity to develop even a basic and rightful defense. This evidence described above, warrants further examination through sworn testimony to advance and more fully develop this record of events in this case not known or suspected by the defense during the original trial. If Zach Stringer is to have his day in Court, with all the facts known or to receive any kind fair and an impartial hearing before a Jury of his peers, this evidence should be further explored and acted upon to find the facts.

INTRODUCTION –MY BACKGROUND

In my circle of associates, I am considered an expert marksman with a precision long range rifle. I have on occasion conducted training exercises for Montana law enforcement snipers and members of the military. In the past I have also had occasion to work and train alongside U.S. independent security contractors deploying abroad. I have given presentations regarding this same subject matter to operational snipers at restricted national conferences and I have served as

a consultant to various agencies, related organizations promoting sniper craft and marksmanship to include individual officers requesting my assistance after a Remington Model 700 sniper rifle has experienced an inadvertent discharge by law enforcement S.R.T. operators.

As a dedicated researcher involving the documented history of malfunctions with Remington rifles, in order to advance my personal and professional knowledge of this subject matter, I have taken it upon myself to attempt to unseal information related to Remington bolt action litigation that has been, at Remington's insistence, systematically sealed from public inspection as a condition of settlement. In the matter of *Aleksich v. Remington et al.*, the entire record was once sealed from public inspection as a condition of settlement. This was the result of Remington's untimely production of the most damaging, self impeaching document production to ever see the light of day in any previous Remington rifle litigation prior to 1995. This evidence was disclosed and produced three years after the Court ordered production of related documents. In this instance, the supplemental document production occurred years after discovery concluded in this case and only weeks before the trial was scheduled to begin. Here in the *Aleksich*, the company was most certainly going to be sanctioned by the Judge for discovery abuse and alleged fraud on the Court. In a motion hearing requesting sanctions against Remington for the untimely production of documentation the Court stringently suggested to Remington the case to be settled or Remington would face the dire wrath of the Court. In my capacity as an individual representing the safety interests of the public, my goal was to unseal the record in the *Aleksich* litigation to learn why this entire record was sealed from public inspection.⁶ I was eventually successful in this pursuit to leave no stone unturned in my quest to unearth the facts associated to this vast issue. It was at this time I was recognized by the Honorable, Richard F. Cebull as being acknowledged by his Court as "a firearm expert" in the matter of *Aleksich v. Remington et al.*⁷ This should serve to sufficiently establish I am competent to testify as a subject matter expert to the matters set forth herein based on my own personal knowledge involving the development, function and design; and including the history of the Remington Model 700 bolt action rifle (generally) but further including my developed insights involving the history of Stringer Model 700 incident rifle—the same rifle that Zach claimed fired without the trigger pull resulting in the unintentional death of Justin Stringer on or about, June 11, 2011.

My area of expertise and personal knowledge is largely the result of my extensive investigations and exhaustive research efforts that has spanned the past 16 years involving the functional design deficiencies in a host of Remington's bolt action rifles. This endeavor was once the result of the death of my own son, Gus Barber, who was killed on October 23, 2000. Gus' death was the direct result of an inadvertent discharge of a Remington Model 700 rifle that fired when the safety was released. This incident resulted while a family member, my wife, was in the process of unloading the subject Model 700 rifle when the rifle exhibited what Remington refers to an "FSR" malfunction.⁸ While this event came as a great surprise to us, I would learn this "FSR"

⁶ Prior to my successful campaign to unseal the "*Aleksich* case", a Pacer inquiry revealed - "Sealed v. Sealed - The entire record is sealed."

⁷ Order of the Honorable Richard F. Cebull, September 4, 2012, acknowledging "Barber, who is a firearm expert..." (attachment (5) *Id.* P. 4, L. 3, second full para.) This establishes I am considered a firearm expert by a member of the Federal Judiciary and therefore I am qualified to render my opinions supported by evidence in this matter subject to Judicial review of the State of Mississippi.

⁸ The malfunction associated to the Walker fire control have been so common and persistent, Remington has created acronyms for several forms of malfunctions associated to their trigger designs. As you observe above, the acronym

event was no surprise to Remington at all. Since the time of Gus' death I have invested significant time, developed talent as an investigator and researcher, to include the development of vast resources to find the truth for myself involving the full extent of the well documented functional deficiencies in the Model 700 rifle that claimed the life of Gus Barber on the above date. I have left no stone unturned in my search for the facts involving, among other things, what Remington knew, when they knew it and what the company did or did not do with their own developed body of knowledge documented within the pages of their own internal documents I have painstakingly collected and reviewed. This includes how Remington has historically addressed foreseeable design deficiencies and known inherent dangers in Remington's bolt action rifles through a continual and unprecedented pattern of steadfast public denial, not only before the Courts, but collectively to members of the public. These denials are belied by the fact Remington's claims and public denials are contradicted by what their own internal documents reveal. I would also learn how Remington has historically addressed its future liability concerns and exposure through the development of defensive measures to point blame at victims like Zach Stringer, instead of taking responsibility for the safety of Remington's products in the hands of the unsuspecting public through meaningful warnings or effective safety recall programs. Historically Remington does not issue warnings or safety recalls unless it is to their best interest or until forced to do so through costly protracted litigation –and even then, the company still denies any known danger in its products or wrong-doing involving Remington's less than truthful public denials. Even if the investigators or Lori Beall would have contacted Remington involving the death of Justin Stringer in 2011, based on information and belief, Remington would have most likely denied any knowledge of problems with the XMP fire control and proclaimed the incident Model 700 rifle to be a safe and reliable rifle. There is evidence supporting this belief, showing Remington told a customer in 2011 complaining his rifle employing an XMP fire control system fired without a trigger pull not to be concerned and the rifle is safe. The customer pointedly exclaimed his displeasure regarding what Remington told the gentleman in 2011 after Remington issued a recall on the same rifle in 2014.

Through the years, I have personally collected the largest private collection of information related to Remington bolt action rifles. This population of material I have personally amassed, reviewed and digested ranges in millions of pages of content related to this issue. I have historically used this information to support my developed insights and conclusions, as I do in this instance. As a result, I have become generally recognized as an authority of the subject matter involving the history of functional and design deficiencies in Remington bolt action rifles. As a consulting expert, I have not only rendered my services to trial attorneys in a host of litigations in Federal Courts, to advance the interests of injured parties against Remington but as shown above my insights and opinions have been prominently featured in more than a few nationally broadcast news articles involving this issue and subject matter. Most recently, Sunday, February 19, 2017, the 60 Minutes news organization aired a story about the Zach Stringer incident, in large part, advanced by my investigation and detailed analysis of this case. Related information to Zach Stringer's story can be seen at the following

for the most common form of malfunction is fire on safety release. Remington refers to this malfunction as "FSR." Others include firing when the breech bolt is being opened as "FBO," closing "FBC," when the rifle is subjected to jarring forces as jar off "JO." Most recently, I have identified another malfunction I believe is present in both the Walker fire control and the XMP fire control systems –known as a "fails to fire malfunction." This malfunction is evidenced in the CNBC Documentary, *Remington Under Fire*, by Portland Maine law enforcement snipers.

link: <http://www.foxnews.com/news/popular/remington-770-rifle-linked-to-potentially-deadly-attacks>

It should be noted, the District Attorney, Hal Kittrell, the prosecutor who advanced criminal charges against Zach Stringer was interviewed by Leslie Stahl in the attached 60 Minutes story above. What he proclaimed in his own words in the above interview is telling indeed and should be considered to support Zach Stringers request for a new fair and impartial trial based on newly discovered evidence that was not discovered, existed or was claimed to have been known by the prosecution at the time of Zach's original trial. 60 Minutes interview question to the District Attorney, Hal Kittrell.

Question by Lesley Stahl to Mr. Kittrell: *"Had you known about this issue with this gun, the trigger problem, would you have gone ahead with the trial...?"*

In his own words Mr. Kittrell's answer: *"I will say this Lesley, had we known there was a problem with the trigger before we were getting ready for trial I can assure you we would have looked into that and we would have assessed this case based on that evidence there is no question about that."*

If Mr. Kittrell's statement to 60 Minutes is taken at face value, holds more true today as it would have in 2011, when Zach was initially arrested; and in 2013 before the Stringer trial. The above statement by the district attorney, Hal Kittrell, clearly speaks for itself to indicate, clearly and convincingly, the district attorney did not have all the facts surrounding the death of Justin Stringer at the time Zach was arrested and prosecuted for the murder of his brother. In fact, this recent statement by Mr. Kittrell, himself, in his own words: *"had we known there was a problem with the trigger before we were getting ready for trial I can assure you we would have looked into that and we would have assessed this case based on that evidence..."* The before mentioned statement clearly demonstrates the prosecution advanced this case without all the factors known about the rifle in question, to support Zach's claim the rifle fired without a trigger pull and now clearly and convincingly supports a conclusion Zach was deprived of a fair and impartial trial without all the facts known at that time. The above statement by Mr. Kittrell, makes it abundantly clear to anyone looking at the new evidence objectively, in this specific circumstance, Zach is certainly deserving of a new trial, in part, based on the district attorney's own statement in the above interview with 60 Minutes -but also through the revelation of new evidence and information that has come to light in the last year outside the scope of knowledge of all involved with this unfortunate set of circumstances that collectively contributed to Justin's death and the questionable conviction of Zach Stringer. Zach should now have the opportunity to exonerate himself through the revelation of new and compelling information, insight and evidence before a Jury.

MORE RECENT EVENTS INVOLVING MY ACTIVITY AS A CONSULTING EXPERT AND A NATIONALLY RECOGNIZED AUTHORITY INVOLVING REMINGTON RIFLES

At one time, before my 2015 retirement, I worked as consulting subject matter expert in a highly publicized national class action litigation, now subject to a settlement proposal in Missouri styled *Pollard v. Remington et al.* My personal and professional document research

activity, including my developed opinions derived from my research were heavily relied upon by class counsel to advance this litigation on behalf of millions of Remington bolt action rifle owners. Remington through this proposed settlement is now offering to replace the Walker fire control system in over 7.5 million Model 700 rifles with the XMP fire control system at no cost to the class among other provisions involving the proposed settlement. As I will show, this includes a provision for a voluntary Safety Recall and retrofit by Remington on all the rifles containing the X-Mark Pro (XMP) fire control system manufactured between the years 2006 through 2014. Every single XMP ever produced is now covered by this Remington Safety Recall including the Stringer rifle –the same exact fire control involved in the incident resulting in the death of Justin Stringer and further resulting in the arrest, prosecution, conviction of Zach Stringer.⁹ (attachment (6) Remington XMP Recall Notice)

As class counsel was advancing the proposed settlement through mediation for a free retrofit to the rifles that employ the Walker fire control system with the XMP fire control, I had come to believe a functional deficiency existed in the XMP design. Class counsel would engage in due diligence discovery to ensure the “fix,” the XMP, for the proposed retrofit of the large population of rifles containing the Walker fire control was adequately safe and reliable for the retrofit. At this time I was requested by class counsel to execute a declaration calling out the suspected deficiency I believed I had identified that would lead to further safety related malfunctions with this design that I compelled Remington to develop after the death of Gus Barber. In my 2014 declaration I was concerned malfunctions with the XMP fire control would lead to further deaths and injuries as in this instant case involving Justin Stringer. In the interest of being brief, I will let my previous declaration speak for itself other than to state I put Remington on notice and the safety recall on the XMP followed shortly after I executed my declaration to class counsel in *Pollard*, outlining my concerns with the functional reliability involving the XMP fire control system at that time. (attachment (7) Declaration of Richard Barber January 2014)

Since resigning as a consulting expert to class counsel in *Pollard*, I have since become a limited objector to the proposed settlement in the above styled national class action litigation to attempt to represent the best interest of the public. My limited objections in *Pollard* involve certain provisions in the proposed settlement that I do not consider to be in the best interest of the public. My limited objection also seeks sanctions against Remington and its counsel for alleged misconduct in this case. Multiple requests for sanctions are now under consideration before the Honorable Ortrie D. Smith in the above cited *Pollard* case. Most recently, ten (10) independent Attorneys General offices have joined to support my limited objections and my concerns to the proposed *Pollard* settlement. I offer this evidence to demonstrate the legitimacy of my standing to act as an expert in this case, in the interest of finding the truth, so justice may be eventually served. While someone might attempt to suggest to this Court my investigation, document research and analysis of the Stringer incident may in some way be biased from my past history as it relates to the death of my own son, this claim, if it arises, just cannot be supported by any measure of fact as anything other than mere conjecture or innuendo to challenge my standing as a subject matter expert before this Court. This has not been effective in past litigation where I have offered my services as a subject matter expert. I have better than average knowledge of this subject matter but a much more advance physical command and much more superiority of

⁹ The subject rifle involved in the death of Justin Stringer is one of the rifles subject to this 2014 safety recall.

knowledge of this subject matter well beyond the scope of knowledge of the average human. Therefore, should any arguments suggesting otherwise should be considered to have any merit or should hold any weight in this matter.

As the Mississippi Supreme Court considers Zach's request for a new trial based, in part, on my developed insights or the new evidence I bring forth to advance Zach's only logical course of action, please consider while I was conducting my analysis of this case I relied heavily upon my specialized knowledge gained through many years of research as a Remington bolt action rifle subject matter consultant. This specialized knowledge and insight was learned through document discovery and analysis in my capacity as a consulting expert. This detailed knowledge as I will show throughout this record, now clearly and convincingly shows the Model 700 rifle involved in the Stringer incident, in fact, at the time of the death of Justin Stringer had certain physical propensities to fire without a trigger pull, exactly as Zach Stringer claimed shortly after the incident. This new evidence brought forward in the foregoing and following paragraphs clearly supports a new trial based on newly discovered evidence outside the scope of knowledge of all involved in the prosecution of Zach Stringer or the biased community demanding prosecutorial action against Zach at the time of his arrest and subsequent conviction.

It is also noteworthy of mention, the extreme public bias that existed against Zach Stringer after his arrest is what appears to have served as the driving force to compel the district attorney, Hal Kittrell, a public servant duty bound to the community to prosecute Zach. In my review of the record, I noted letters to the trial judge strongly suggesting Zach Stringer was perceived as a danger to the community and certain family members who petitioned the trial Court to ensure Zach would not be released on bail prior to his trial. One letter I reviewed went as far as to suggest if Zach was released on bail and came in close proximity to certain members of the community, they warned the Court they believed they would be in eminent danger and respond accordingly – not in so many words suggesting physical harm might come to Zach if he should ever be released on bail. The record shows the prosecution was under extreme pressure by the community and being compelled by the outpouring of public prejudice against Zach to advance this case to ensure Zach would remain behind bars –possibly indefinitely –if convicted on the original murder charge requested. This “unprecedented” outpouring of public sediment and demand for “justice” is outlined by the district attorney himself showing public prejudice no doubt played a large factor to compel the district attorney to advocate prosecution due to public pressure but the public bias and prejudice possibly extended to influence any Jury to render a conviction of manslaughter. My observation is contained in the record—where the prosecutor, a public servant, duty-bound to the public stated in the record he never had seen anything like this unprecedented public demand for a conviction before the Stringer trial. (*Id. Motion Hearing, October 16, 2012*) Zach was in large part convicted as a result of public prejudice and bias was compounded by the fact the Jury never saw any evidence showing any remote or actual propensity for the Model 700 rifle involved in this incident firing without a trigger pull as Zach stated in interviews to investigators. Nobody believed him, not even his own father believed Zach's “story” about the unexplained fatal discharge that Zach himself could not come to terms with or offer any reasonable explanation at that time. Alienated, abandoned and alone, Zach was forced to go to trial devoid of any unexplained spontaneous discharge defense because everyone disregarded his explanation and as a result nobody sought to seek any information related to inadvertent discharge with the Remington Model 700 rifle. Even if anyone had, at that time we

were powerless to assist in large part because the information itself was subject to protective orders in multiple courts and could not have been discussed let-alone divulged or produced until the blanket seal on Remington's documents was eventually lifted in October 2015, as I have shown in attachment (2). If anyone who knew anything about this evidence would have dared talked or released any documented evidence, they would have been liable for any direct or imagined damages sustained by Remington and the contempt powers of the Federal Courts at Remington's insistence for release of the only information affording Zach an adequate and rightful defense. (see attachment (2) Letter from Remington to Barber)¹⁰

MY INVESTIGATION POLICY AND ANALYSIS OF THE STRINGER INCIDENT

As with any legitimate investigation, I start my research of each case as a clean slate and not with pre-conceived notions, beliefs or opinions of what I believed happened. My insights are developed through the revelation of the facts that are revealed through the record of any incident where it is claimed a Remington rifle was alleged to be causative to the injury or death of an innocent bystander. I begin each investigation with the premise there are two (2) sides to every story and sometimes the truth is found to be somewhere in the middle to show litigation is not warranted or justified in all instances, even though the injury or death was accidental in nature.¹¹ This is the direct result of my stringent policy to always conduct a pre-condition screening process before I will offer my consulting services to most if not any and all cases. As an investigator of this subject matter, through my independent research, I fully recognized the importance of the systematic collection and review of evidence and following that chain of evidence without emotional bias, one way or another, to eventually arrive at logical conclusions and to completely avoid inference to the facts not fully substantiated or supported to formulate my opinions. This is accomplished through the review of police reports in the record, interviews but especially including a determination if Remington's own internal documents support any claims of a defect theory to decipher if any known defect or functional design deficiency was potentially causative to another unfortunate accident involving a Remington bolt action rifle. I believe this to be the case in this instance based on my analysis of documentation to support my opinions to date. Without this skepticism, as a matter of personal or ethical policy before committing my services to any case, my credibility and the integrity of my research would be easily impeached. This policy is what has permitted me to endure the test of time and to ultimately serve the greater good of the public, to remain a leading authority involving the inherent danger in a host of Remington bolt action rifles for as long as I have without legal reprisal or retribution by Remington against me or any of the news organizations I have offered my opinions or insight over the past sixteen (16) years.

To avoid any arguments as outlined above, again I reemphasize, my consulting services to the Stringer family is strictly on a no charge basis. Therefore, to remove any argument through suggestion or innuendo I have any bias – one way or another – I have no vested financial interest

¹⁰ This shows Remington's response at the mere suggestion documents once bound by protective order were going to be released to the public after the documents were produced to Remington in the Barber Defamation litigation without a protective order in effect after being informed I would never agree to any measure of secrecy.

¹¹ However, this is just not found to be the case here in the Stringer incident where one boy's life ended tragically and another not only lost his freedom but his future will be severely impacted for the rest of his days as a convicted felon.

the final outcome of my investigation into the incident where Zach Stringer was charged criminally liable for the death of Justin. I am now primarily involved as an independent advocate, because I full well believe the evidence I have uncovered throughout my investigation and analysis of this case warrants a new trial. I am a believer based on the information and evidence I have reviewed in this case and involve myself as matter of public service in the interest of justice eventually being served. As a result, I hope to see what I consider to be a tragic injustice and the conviction reconsidered after the results of my investigation are revealed. This includes the revelation of truly newly discovered evidence can now brought forth to ensure Zachary Stringer may have his day in Court with the recently disclosed evidence that did not exist or could not have possibly been discovered at the time of the investigation, trial or any previous appeal. The new evidence shown throughout my Declaration will show better than a "reasonable doubt" to a Jury to only now support Zach's claim the rifle just "went off" without him pulling or contacting the trigger. Without a showing of malice, motive or intent to kill Justin, this is most likely the best and most reasonable explanation of the unexplained discharge and true physical cause of Justin's death as Zach Stringer claimed shortly after the incident. This family and the community in which they live is most deserving of the facts, to learn the truth not otherwise readily known so this family and the community can finally heal from this tragic ordeal and to learn the most plausible cause of this unexplainable loss -Justin deserves no less so he can finally rest in peace. I now offer my services, for the last time, as a vehicle and path to the undeniable facts I have uncovered in my own search for the facts in this instance -for which I believe it is to everyone's best interest to revisit this case to find the truth for themselves if justice is to have any meaning in the future involving this unfortunate set of circumstances surrounding Zach's wrongful conviction.

THE XMP FIRE CONTROL SYSTEM

While I have done my best to attempt to bring public awareness to the inherent danger involving the now infamous "Walker fire control system," the fire control contained in the Stringer incident rifle is in fact altogether a completely different design than the previous fire control design that has received so much negative public attention. At the time of the 2011 Stringer investigation and subsequent trial in 2013, nobody had any way of knowing the XMP fire control design was suffering from similar forms of malfunctions that would permit or cause the Model 700 rifles containing the XMP to spontaneously fire without the trigger being pulled to discharge the rifle. Knowledge of these facts would be paramount to not only ensure public safety but knowledge that might have altered the events of June 11, 2011, resulting in the death of Justin. This concealed information would first have to be revealed before Zach Stringer could ever hope to receive a fair trial based on this critical information to support his claim the rifle just went off without him ever intending for it to do so being considered by a Jury. This never came to light in the original trial. As I have already explained in some detail, one contributor was the result of overly broad confidentially agreements and protective orders stringently preventing the dissemination of information for Zach to receive a fair trial before a Jury of his peers.¹² As I have already shown, the XMP fire control system (the same fire control in the Model 700 rifle subject to the Stringer incident) was eventually recalled by Remington in 2014 well after the Stinger

¹² See attachment (1) Letters of Understanding lifting blanket seal on previously produced discovery documents in Remington bolt action rifle litigation.

trial. The language in Remington's XMP safety Recall Notice is telling indeed and should have been considered by the Jury in his original trial

"Any unintended discharge has the potential to cause injury or death..."

The above language in Remington's own 2014 XMP safety Recall Notice strongly indicates to the public without modification and/or retrofit of the XMP fire control, the identified conditions noted in Remington's safety Recall Notice could be deemed unsafe to any user or bystander. At the time Justin was killed, no such warning or safety recall existed even though Remington had certain physical knowledge of inadvertent discharges with their bolt action rifles. Remington itself, considered "accidental discharge" as the single most significant and leading contributor of injury and death long before the Stringer incident. This is evidenced by the following document generated and compiled during the development of internal drop testing protocols in 1944. This ideology and knowledge would be reaffirmed in revisions to the same document as late as 1969.¹³

"A common source of accidents with firearms in accidental discharge. A safety mechanism is provided to insure against accidental discharge..." (attachment (8) 1944 - 1969 Drop Testing)

Today Zach Stinger is no longer alone when he claims a Model 700 rifle fitted with the XMP fire control fired without a trigger pull or that he intended to discharge the incident rifle on June 11, 2011. Zach reported this unintentional discharge to investigators and his father, who also did not believe him at the time, when he said the rifle just went off without the trigger being pulled. For the limited purpose to support Zach's steadfast claim, hereto, I offer only a very limited sample of Remington customer complaints showing other individual rifles fitted with the XMP fire control system have been claimed to have fired without the trigger being pulled.¹⁴ (attachment (9) Remington Customer Complaints)

As I reviewed the record in this case, as a litigation consultant, through discovery, I knew Remington engaged in a conscience redesign effort to modify the manufacturing specification to the sear to mitigate the potential for the cocking piece to bind on the sear as a result of friction

¹³ As I will show in later paragraphs, Remington abandoned this ideology in favor of advancing its defensive position in litigation involving accidents with Remington bolt action rifles. This change in ideology came in 1978 when Remington came to a candid and well documented realization internally - "a common source of accidental discharge" with Remington rifles was the result of fire on safety release malfunctions. In other words, a failure of the trigger in the Walker fire control system to perform its intended function resulted in documented spontaneous accidental discharge malfunctions upon release of the safety. This was realized and documented internally to be the actual source of accidental discharge with a host of Remington rifle models fitted with the Walker fire control and now know to be potential contributor of accidental discharge with the XMP fire control.

¹⁴ This is only a small sample of complaints I offer at this time, there are potentially hundreds more as the CBS 60 Minutes story states in the Stringer story. It should be also be noted, most, if not all the Remington customer complaints I offer into evidence are dated 2008 - three years before the death of Justin Stringer. This serves to demonstrate, Remington was aware and should have been considered to have been put on notice involving safety related malfunctions with the XMP fire control before Justin's untimely demise, for which Zach has paid an unjust price. This is why I sought to determine if at any time Remington told investigators or the crime lab the incident rifles was safe. It remains to be seen to what extent, if any, Remington might have been involved behind the scenes when my interview questions are answered under oath through sworn testimony.

that I believe could result in "jar off" malfunctions with the XMP fire control in 2008

¹⁵(attachment (10) Modified Sear Redesign Testing)

On information and belief, the Stringer incident rifle was manufactured and distributed into the mainstream of public commerce before the modification to redesign the dimensional characteristic of the sear in the XMP fire control took place, to mitigate the potential for inadvertent discharge resulting from a random jar-off malfunction. One thing we do know today that was not known at the time of the Stringer trial, the rifle is subject of an outstanding safety recall as of roughly April, 2014. This recall is the result of what Remington contends to be a condition where excess bonding agent was improperly applied during the manufacturing process on rifles between the years 2006 through production in 2014. Therefore the questions still remain if any modifications or process Remington undertook before 2008 or anytime thereafter was in any way a physical contributor to the fatal discharge with the Stringer rifle. This will only be known and questions answered if discovery with Remington can be conducted in this case. There are other questions to be answered and explored after a qualified firearm defense expert has an opportunity to inspect the subject Stringer rifle. To date, to the best of my knowledge, no such defense expert, representing the interest of Zach has ever inspected or has the subject rifle undergone any examination on Zach's behalf. As I have now shown, this knowledge includes known or suspected functional deficiencies in the XMP fire control system before Justin Stringer was killed. Remington was adequately put on notice involving the potential for inadvertent discharge by a host of customers complaining their rifles fitted with the XMP fired without a trigger pull. Further, as I have briefly outlined, Remington's engaged in an internal effort to mitigate the potential for inadvertent discharge involving the Remington Model 700 rifle subject to the death of Justin Stringer and the criminal prosecution of Zach. I have only offered evidence for the limited purpose of establishing reasonable doubt to Zach's guilt to advance this case on the merit warranting a new trial. As the case progresses, if Zach is granted a new opportunity to properly plead his newly discovered defenses, I am fully prepared to offer even more evidence I anticipate may be required to challenge the prosecution if they should decide to retry this case with the evidence that exists in the currently established record.

MEDICAL EXAMINOR ERIN BARNHEART TESTIMONY

As I have already indicated previously, I sought out and interviewed Dr. Erin Barnhart, the Medical Examiner who testified at the Stringer trial. It was not my intent to determine the cause, means and/or manner of death of Justin Stringer. The cause of death was already abundantly obvious to me seeing many such events related to gunshot wounds, especially as it relates to Remington rifles. By this time in my investigation I had already identified possibly hundreds of Remington customer complaints saying the same thing to Remington Zach claimed. The host of customer complaints I have assembled range in dates from 2007 forward, but I am confident we will learn of more incidences where rifle owners complained to Remington saying their rifles fired without a trigger pull. By this time I also identified a design specification change to the XMP sear, I believe to mitigate the potential for inadvertent discharges with the XMP fire

¹⁵ If cocking piece binding or restriction occurs on the nose of the sear restricting the release of the firing pin, the author believe the potential for a "jar off" or "fail to fire malfunction" can occur and the rifle could spontaneously discharge as a result of impact, or the bolt handle being touched without trigger contact. See Portland Maine sniper malfunctions, CNBC Documentary, *Remington Under Fire*

control as Zach claimed. By this time I had also offered my declaration to class counsel in *Pollard* outlining my grave concern and belief involving another deficiency that could lead to spontaneous discharges with the XMP fire control and further including, I noted the Remington safety recall that would follow after my 2014 Declaration to class counsel in *Pollard*. My interview was much more limited to Dr. Barnhart's testimony where she was asked by the prosecution to delineate the difference between an accidental shooting versus an intentional homicide involving a firearm. For this purpose I will quote the testimony in the record itself.

Q: "Getting to the manner of death being accidental versus homicide -okay?"

A: Okay.

Q: What factors would you need, generally speaking, to make that determination?

A: The delineation between accident and homicide with reference to gunshot wounds is - - I think the easiest way for me to phrase it would be this. An accidental death or manner of death with a gunshot would entail some evidence that the gun had actually misfired or fired without the willing effort of another person."

Q: All right. And if the proof is that the gun cannot be - -

Mr. Former: Now we're going to have to object, Judge ... "(Id. Trail Transcript P. 226, L. 13-28)¹⁶ (Id. Trial Transcript P. 226)

My interview with Dr. Barnhart was primarily centered on the above testimony. The record is clear, she could not conclude with any degree of certainty, one way or another, Justin's death was intentional or accidental. She just did not have the evidence before her to make this conclusion without review of further new evidence that only now exists, showing more likely than not the incident rifle, beyond a reasonable doubt, spontaneously fired as Zach Stringer claimed then and still insists today. Zach was severely prejudiced by the prosecutions adverse inference to the Jury the only way the rifle could fire is only if the trigger was deliberately pulled and the troubling physical tissue damage to Justin Stringers face and evacuation of the cranial vault seen by the Jury could only be the result of Zach's contributory negligence or actual intent to inflict harm.

In my interview with Dr. Barnhart I offered this question after generically talking about documented malfunctions with Remington rifles.

Q: If we held a new trial today, with new evidence showing a rifles propensity to inadvertently discharge as Zach claimed without a trigger pull -the M.E. [Dr. Barnhart] by her own definition of accident v. homicide would now conclude the incident an accidental death. (Interview date April 26, 2016) The missing evidence was a key component for the prosecutions expert to render

¹⁶ I am attaching a limited portion of the trial transcript related to Dr. Erin Barnhart's testimony to support my developed insight regarding accidental versus intentional manner of homicide resulting in death. This subject continued in the included record from pages 226 - 241. (attachment (?) Barnhart Testimony- Accidental Death v. Homicide)

a reliable opinion involving the manner of death in the Stringer case. Had this evidence been known, discovered or heard by the 2013 Jury, the outcome of the trial would in all likelihood be different today if Jury today heard Dr. Barnhart conclude the incident accidental. We will never know for certain today unless Zach Stringer is granted a new trial with all the new evidence known.

CONTRIBUTORY NEGLIGENCE – THE TENANTS OF SAFE GUN HANDLING

Briefly, I will discuss the “10 Commandments of Safe Gun Handling.” Any time there is an accident involving a firearm, the issue of contributory negligence will arise to point blame and shift responsibility for the incident to the gun handler. As I have shown even Remington itself acknowledges “a common source of accidents with firearms is accidental discharge. A safety is provided to prevent accidental discharge.”¹⁷ As recently as 2014, Remington reaffirms this reality in the XMP Safety Recall Notice when the company warns Model 700 owners to quit using the rifles fitted with the XMP until they have been properly inspected and retrofitted with a new fire control system to mitigate the potential for spontaneous unintended discharges. To be clear, Remington itself states: “Any unintended discharge has the potential to cause injury or death.” What is not readily known, at one time when Remington came to the realization of the physical propensity for inadvertent discharge with rifles employing the Walker fire control system, to “put the company in a more secure position with respect to product liability,” Remington revised the tenants of safe gun handling. (attachment (11) Remington revisions to 10 Commandments of Safe Gun Handling)

Long story short, Zach Stringer was convicted for manslaughter because of a potentially known or highly suspected functional deficiency in the incident rifle by Remington and to include people involved in civil litigation who have seen the information supporting such a belief. His father, the investigators or the prosecution had no way of knowing these facts. Compounding this unfortunate set of circumstance, the prosecution used Remington’s –go too – developed liability exposure defense to claim this fifteen (15) year old boy was in some way negligent in his conduct and actions when he could have not controlled the time, the place and the instant the rifle might have fired without him ever touching the trigger. Law Enforcement officers carry their duty weapons with a round in the chamber everywhere they go in their capacity as peace officers. As firearm owners we should have an inherent right to trust the integrity of the firearm design to insure it will not fire without the trigger being pulled –the same as the investigators that developed this case must rely on their side arm, long rifles or shotguns not to fire without then intending to do so within every situation imaginable amongst members of the public. This double standard should not apply in this instance. If the investigators side arm, pointed at their leg or members of the public should accidentally discharge without them intending for it to do so places anyone within close proximity to unnecessary and foreseeable risk of injury or death. If this hypothetical scenario were to occur and someone were killed, would they be subject to the same penalty as Zach Stringer and judged by the same standard? I

¹⁷ Please note the Remington rifle malfunctions in the following 1975, attachment (12) I contend Remington revised the 10 Commandments of Safe Gun Handling after the company came to the realization the safety manipulation on the Model 700 and other rifles employing the Walker fire control was known to be the physical source of accidental discharge in Remington rifles. Hardly a “fix” but instead a defense, to point blame at Remington’s customers when an accident occurred with a Remington rifle.

would like to think not if it was determined a defect or functional deficiency in the firearm was determined to be the primary cause of the incident

CONCLUSION AND CLOSING REMARKS

Without any knowledge of evidence of defect including any known or suspected functional deficiency in the XMP fire control system, specifically what Zach Stringer claimed happened to him and Justin was rendered moot and ignored. As a result of this oversight and court secrecy the Jury was prevented from considering all the facts surrounding the death of Justin. In essence (as only a fifteen year old child himself) Zach, might as well have been confronted by an angry mob and his hands bound behind his back, unable to defend himself in any manner or capacity. Nobody could protect or adequately defend him then, but this is not the case now. The above statements and evidence mostly generated by Remington itself acknowledges such an accident as in the Stringer incident is entirely foreseeable as a result of the manufacturing defect that was identified by Remington in 2014 warning the rifle should have undergone examination, diagnosis and repair before any further use of the rifle should have occurred to prevent a tragedy as in this instance. Had Roger Dale Stringer been aware, by Remington, such a safety concern, defect or deficiency existed before this incident, being a responsible parent and firearm user, in all likelihood Justin would still not only be alive today but Zach's youth would not have been destroyed to the degree it has. If this was the case, in the ideal world, none of us would be here today advocating to ensure Zach has his rightful day in Court with all the evidence now known to exist to explain the events of June 11, 2011, information, facts and details once withheld from the Jury. Today, as a 20 year old young adult, Zach should be permitted to present this new evidence to a Jury so it can weigh all the information, facts and details that exist today. While nothing we do today will ever bring Justin back, we all have the obligation, a duty and the burden to give Zach a fighting chance to restore his standing, in some capacity, to restore his future by closing this chapter in his life. It is my great hope the truth may set him free, not only from the burden of his brother's death but to show better than a reasonable doubt in the minds of members of his community and a Jury what he claimed happened the evening of June 11, 2011 happened the way he described the event as the primary contributory cause of Justin's death.

This the 2nd day of March, 2017.


RICHARD BARBER

Sworn to and subscribed before me this the 2nd day of March, 2017.

(Notary Seal)

My commission expires:




NOTARY PUBLIC

October 27, 2015

John K. Sherk III

Via Electronic Mail

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Re: Remington document disclosures

Dear Charlie,

As we have indicated to you several times over the last few weeks, the Defendants will not claim and are not claiming that any documents previously produced by the Defendants in any prior bolt-action rifle lawsuits are still subject to any of the protective orders which were entered in any of those cases. As a result, Plaintiffs are free to make those documents available to potential class members and the public. As for any documents and tangible things listed in the Plaintiffs' initial disclosures in *Pollard* which were not previously produced by the Defendants in any prior bolt-action rifle lawsuits, it is entirely up to the Plaintiffs and their attorneys as to whether those are made available by you to the potential class members and the public. We also have no objection to you sharing this letter with Arthur Bryant or any other person or entities.

To be clear, the Defendants are not producing or agreeing to produce any documents in furtherance of this agreement, nor are they establishing a repository for documents. Instead, the Defendants are confirming that they will not object to potential class members' or the public's review and/or disclosure of the Defendants' previously produced documents, although Defendants may choose to respond or comment about the documents' content or meaning following any disclosure.

Sincerely,



John K. Sherk, III

11/10/2015

2015.10.27.15:04:00 (UTC) TO: THE PLAINTIFFS' COUNSEL, SHOOK P.L.L.C. FROM: JOHN K. SHERK III

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Charles E. Schaffer
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October 2, 2015

Via First Class Mail and Email: abryant@publicjustice.net

Arthur Bryant, Chairman
Public Justice
555 12th Street, Suite 1230
Oakland, CA 94607

Re: Document Disclosure

Dear Arthur:

I am enclosing a copy of a letter from Remington's counsel wherein Remington clearly states that any and all documents previously produced by defendants in any prior bolt-action rifle suits are no longer protected by any protective orders which were entered in any of those cases. Plaintiffs' counsel are free to make those documents available to potential class members and the public. With respect to any non-Remington documents and tangible things listed in the *Pollard* initial disclosures which were not previously produced by the defendants in any prior bolt-action rifle suits, Remington has indicated that it is entirely up to plaintiffs and their attorneys as to whether those are made available to the potential class members and the public. I have confirmed with Remington's counsel, John Sherk and Dale Wills, that Remington does not have any reason to contest or object to plaintiffs' counsel disclosing these documents to potential class members and the public. Therefore, I am confirming that plaintiffs' counsel will produce to Public Justice, potential class members and the public, any documents in their possession, custody or control from prior bolt-action rifle lawsuits. In addition, plaintiffs' counsel will produce to Public Justice, potential class members and the public, any and all documents and tangible things listed in plaintiffs' initial disclosures in the *Pollard* action.

Based on the agreement with Remington, it is plaintiffs' counsel's position that the scope of the Court's Order denying the Motion for the Joint Protective Order has been clarified - all documents previously produced by defendants in any prior bolt-action rifle lawsuits are no longer protected by any confidentiality orders and can be disclosed to the public and potential class members. As stated above, plaintiffs' counsel will produce any of those documents in their possession, custody or control, as well as those documents and tangible items listed in the *Pollard* Rule 26 disclosures. As such, I believe this should resolve the issue for your client Center for Investigative Reporting, alleviating the need for Public Justice to object to the proposed Settlement or move to intervene and seek public access to the documents, tangible things and exhibits in *Pollard v. Remington*.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



CHARLES E. SCHAFER

CE:sdg:enc

cc: Richard Arsenault
Eric D. Holland
W. Mark Lanier

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2013

2013

February 25, 2013

Mr. Richard A. Ramler
Ramler Law Office, P.C.
202 West Madison
Belgrade, Montana 59714

Re: Barber v. Remington
Our File: R7923-G682*

Dear Rick:

I write in response to your letter of February 21, 2013, and plaintiffs' threat to publicly disseminate Remington documents produced under and protected by Stipulated Protective Orders entered in the Williams and Kinzer actions. (Copies of the Stipulated Protective Orders are attached hereto).

As you know, Mr. Barber received protective order documents only after executing the Williams Stipulated Protective Order Acknowledgement, agreeing to be bound by and subject to the terms of that order. (A copy of the Williams Stipulated Protective Order and Acknowledgement executed by Mr. Barber in 2006 is attached hereto). Similarly, you and Mr. Robinson were more recently provided access to protective order documents only after each of you, as putative class-action counsel in other cases, executed Kinzer acknowledgements agreeing to be bound and subject to the terms of the Kinzer order. (Copies of the Kinzer Acknowledgements signed by you and Mr. Robinson are attached hereto).

If I am to understand the argument of your February 21 letter, it is as follows: (1) the Barber plaintiffs and their attorneys have possession of Remington protective order documents by virtue of their executing acknowledgements agreeing to be bound by and subject to the terms of those orders; (2) the Barber plaintiffs and their attorneys, in response to Remington's production requests in the Barber case, produced protective order documents from Williams and Kinzer; (3) and, plaintiffs' production to Remington of Remington's own documents renders those documents no longer subject to the

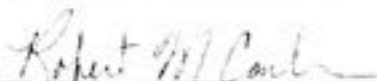
Mr. Richard A. Ramler
February 25, 2013
Page 2

Williams and Kinzer protective orders such that Mr. Barber is now free to publicly disseminate those documents. That argument is, to say the least, preposterous.

Remington documents produced under the Williams and Kinzer Stipulated Protective Orders are still subject to those orders. All signatories to the Williams and Kinzer Stipulated Protective Order Acknowledgements, including Mr. Barber and his attorneys, are bound by the terms and conditions of those orders. Should Mr. Barber or anyone else publicly disseminate Remington documents subject to the Stipulated Protective Orders, Remington will seek all appropriate relief, including sanctions and attorney fees, before the Williams and Kinzer courts.

Yours very truly,

CORETTE FOHLMAN & KEBE

By 
Robert M. Carlson

RMC/ss
Enclosures

cc: Jon D. Robinson (w/enc)
cc: Dale G. Wills (w/enc)

This month's article comes from the H. P. White web site and is reprinted here with their permission.

SMALL ARMS SAFETY EXAMINATION AND TEST PROCEDURES

June 1988
H. P. WHITE LABORATORY, INC.

1. INTRODUCTION

1. Background

The firearms industry provides configuration controls and minimum performance standards for commercially marketed guns and ammunition but these controls and standards have been limited to controlling those features of the gun and ammunition which will insure their configuration compatibility and safe operating pressures.

Compliance with these controls and standards is voluntary and no legal or industrial sanctions are invoked for non-compliance short of litigation resulting from an accidental firing or pressure related gun failure. As a result of this practice, increasing numbers of manufacturers have found themselves involved in safety related litigations wherein the plaintiff seeks ever increasing settlements. While many of these claims are not morally attributable to the manufacturer, most could be avoided by a comprehensive test and examination of the safety related features of the firearm.

Recognizing their apparently limitless financial exposure to safety related product liability litigations, many gun manufacturers have initiated safety related testing of their own or have asked H. P. White Laboratory, Inc. to develop testing procedures and conduct tests of their products in accordance with those procedures.

2. Objective

The objective of these procedures is to identify the principal design features of a handgun, rifle or shotgun which could contribute to a firearm accident and put forth testing procedures which will confirm or deny the adequacy of the design features of a specific model of gun to resist those factors which result in firearm accidents.

3. Scope

The scope of these procedures is limited to the evaluation of design features relating to firearms safety of conventional configurations of guns and ammunition marketed in the United States and which are in compliance with U. S. regulations controlling commercial sale and use of sporting guns and ammunition. All other factors not relating to safety (performance, reliability, etc.) are beyond the scope of these procedures.

4. Applicable Documents

Unless otherwise specified herein all reference to configuration and performance controls are those promulgated by the latest revisions and additions of the following documents:

- a. Performance Standards For Pressure and Velocity of Centerfire Pistol and Revolver Ammunition (SAAMI)
- b. Performance Standards For Pressure and Velocity of Rimfire Sporting Ammunition (SAAMI)

- Performance Standards For Pressure and Velocity of Shotshell Ammunition (SAAMI)
- Performance Standards For Pressure and Velocity of Centerfire Rifle Ammunition (SAAMI)

5. Disclaimer

Compliance with the testing procedures presented herein will not relieve the manufacturer, distributor or user of all specific and implied liabilities to which they would otherwise be exposed nor does compliance with these procedures imply any transferal of any portion of the manufacturer's or distributor's product liability exposure to H. P. White Laboratory, Inc. whether or not testing, conducted to demonstrate this compliance, is conducted by H. P. White Laboratory, Inc. The procedures contained herein are offered to the manufacturer (and others with a direct or indirect legal or moral interest in firearm safety) as a means of evaluating the safe design and performance of a firearms and/or determining the proximate cause of a firearm's accident. Nothing contained herein is to be construed as a guarantee, warranty or endorsement by H. P. White Laboratory, Inc. or its personnel of the design or safety features of any firearm.

II. DISCUSSION

1. General

Lacking universally acceptable standards for the evaluation of the safety of sporting firearms, H.P. White Laboratory, Inc. has reviewed its files of 40 years of firearms and ammunition testing and has attempted herein to define those features of design and firearms usage which have resulted in unintended personal injury or death excluding those sequences or manipulations - whether conscious or accidental - which were intended by the manufacturer to end in the discharge of the gun.

Within this definition of a firearm accident our review revealed that virtually all firearms accidents will be one of two types, Catastrophic failure of the gun assembly, or Inadvertent firings.

III. TEST PROCEDURES - CATASTROPHIC FAILURES

1. General

The test procedures presented herein are general in nature and may have to be varied to suit unique designs and/or unique handling situations. The procedures are those generally and universally recognized by the U.S. Sporting Arms Industry. The procedures are intended to establish the safety characteristics of non-specific makes and models of guns in new condition but, with some variations, may be used to replicate damage to a gun in conjunction with an accident investigation.

2. Test Sample

In order to establish the truly random nature of the sampling it may be advisable to acquire the test sample(s) through a retail outlet available to the general public. The number of guns to be tested (sample size) will be determined by two factors -

1. Whether or not only selected tests presented herein are to be performed and
2. the level of confidence that the results of the sample are representative of the larger population.

The sample submitted for testing should be thoroughly examined, disassembled and photographically documented. All markings relating to the manufacturer, model, serial number, distributor, caliber and cautionary or warning imprints should be recorded. A brief description of the gun's operation should be prepared including - but not necessarily limited to - the basic design and the type of action, hammer, firing pin and safeties.

3. Documentation

The packaging, operating instructions and any other written or graphic materials provided with the gun should be thoroughly reviewed and incorporated in the final test report.

4. Physical Audit

The critical dimensional characteristics of the gun assembly should be determined and should include - but not necessarily be limited to - headspacing, trigger pull, firing pin protrusion, bore diameter and groove diameter.

5. Proof Pressure Tests

The proof pressure test is intended to demonstrate the gun assembly will withstand a single firing of SAAMI high pressure (Proof) ammunition. One cartridge (shotshell) of the appropriate caliber (gauge) conforming to SAAMI specifications, for proof ammunition for that caliber (gauge) is to be fired from each chamber of the gun assembly after which the gun assembly is to be visually examined and inspected (magnetic particle) and its post-test headspacing compared to its pre-test headspacing. Guns of calibers for which no SAAMI specifications exist will use proof cartridges loaded in accordance with other recognized specifications or cartridges loaded to produce pressures in accordance with Table I - in that order of priority.

Maximum Allowable Average Proof Pressures

Pressure of Service Loads	Minimum	Maximum
20,000 and under (a)	1.16 times a	1.7 times a
20,100 to 35,000 (b)	1.16 times b	1.6 times b
35,000 or over (c)	1.16 times c	1.5 times c

TABLE I. PROOF PRESSURES OF CALIBERS NOT SPECIFIED BY SAAMI

6. Excessive Pressure Test

The excessive pressure test is intended to determine the pressure at which the gun assembly is likely to fail catastrophically from the firing of a single cartridge.

Cartridges intentionally loaded to develop incrementally increasing pressures in excess of PROOF pressures, are to be fired in accordance with the schedule of Table II until the gun assembly catastrophically fails or until the maximum pressure of Table II is fired without catastrophic failure. All firings are to be from the same - but randomly selected - chamber in a multiple chambered gun.

Maximum Proof Pressure	Excessive Pressure Start	Firings Incremental Increases	Maximum
20,000 or less	Maximum proof	5,000	4.5 times maximum proof
20,100 to 30,000	Maximum proof	5,000	3.5 times maximum proof
30,100 to 40,000	Maximum proof	5,000	3.0 times maximum proof
40,100 to 50,00	Maximum proof	5,000	2.5 times maximum proof
50,100 or more	Maximum proof	5,000	2.0 times maximum proof

TABLE II. EXCESSIVE PRESSURE TEST PRESSURES

The failure pressure determined by these tests may be somewhat misleading in that the firings of excessive but less than catastrophic pressures may have severely pre-stressed the gun. In order to confirm the results of this test, another unfired sampling is to be continually fired at the catastrophic failure pressures determined with the first sampling until catastrophic failure is produced or until five such firings (per gun) fail to produce catastrophic failure. All firings are to be from the same - but randomly selected - chamber in a multiple chambered gun. During both phases of this test only those repairs or component replacements required to enable the gun to be fired will be made. Such repairs and replacements will generally be limited to the firing pin, hammer, trigger, etc. No component or assembly whose principal or secondary function is the containment of the internal pressures (bolt, barrel, receiver, etc.) is to be replaced or repaired during these tests.

7. Endurance Test

The endurance test is intended to determine the number of firings (of ammunition complying with SAAMI pressure specifications for service loads) required to induce a catastrophic failure of the gun assembly. In order to insure the ammunition used in these tests includes representations of moderately high pressure firings periodically encountered in service loads, a high pressure test (proof) cartridge will be fired after each 100 firings. Firings are to proceed in 500 round increments (including 5 proof cartridges) until catastrophic failure is induced or until a total of 10,000 firings without catastrophic failure have been performed. After each 500 round increment the gun is to be thoroughly cleaned and inspected. Repairs and component replacement during this test are limited to non-pressure containing features of the gun (extractor, firing pin, ejector, etc.). Specifically exempted from such repairs and replacement are the receiver (frame), barrel, bolt, components and features of the locking system, etc. Firings from multi-chambered guns will be conducted in cycles of one firing from each chamber to insure that equal numbers of firings have been conducted from each chamber throughout the test (including PROOF firings).

8. Unlocked Breech Firing Test

The purpose of the unlocked breech firing test is to confirm that the design of the gun will prevent firings from any configuration of the breech other than that intended by the designer. The test is to be conducted on a new sample and on a sample being tested for ENDURANCE (Paragraph 7, above) at the point in that test wherein the headspacing exceeds the maximum recommended by SAAMI or after 5000 firings and prior to any catastrophic failure. Repeated attempts (25 minimum) to discharge the gun with the breech unlocked and/or opened are to be made using a new cartridge for each attempt.

9. Double Feed Firing Test

The purpose of the double feed firing test is to confirm that attempts to feed a second cartridge into an already loaded chamber will not cause the chambered cartridge to fire. Repeated attempts (25 minimum) will be made using two new cartridges for each attempt.

10. Recorded Data

The recorded data will thoroughly document the test sample, test ammunition and any special fixturing and will include pre-test photographs of the sample and fixturing. The recorded data of all testing will include a record of all malfunctions encountered and an analysis (if possible) of the cause. All component replacement and repairs will be thoroughly documented. All breakages and wear will be thoroughly documented and recorded photographically (as appropriate). All catastrophic failures will be thoroughly documented and will include a Photographic record for inclusion in the final report. All gun components replaced in these tests and all fired cases which were fired at other than SAAMI service load pressures or which are damaged or deformed as a result of firing will be preserved and photographically documented.

IV. TEST PROCEDURES - INADVERTENT FIRINGS

1. General

The test procedures presented herein are general in nature and may have to be varied to suit unique designs and/or unique situations. Most of the procedures rely heavily on the experience of test personnel to recognize potential weaknesses of the design and to derive a test which will confirm (or deny) that that weakness is not inconsistent with anticipated, reasonable consumer handling and usage. The procedures are intended to establish the characteristics of non-specific makes and models of guns in new condition but, with some variations, may be used to replicate an inadvertent firing in conjunction with an accident investigation. The inadvertent firing test procedures are of two general types - impact and manipulation. The former are of two types - those intended to reflect the effects of bumping and low level impacts (Mallet Tests) and the more destructive, Drop Testing.

2. Test Sample

In order to establish the truly random nature of the sampling it may be advisable to acquire the test sample(s) through a retail outlet available to the general public. The number of guns to be tested (sample size) will be determined by two factors - whether or not only selected tests presented herein are to be performed and the level of confidence that the result of the sample are representative of the larger population. The sample submitted for testing should be thoroughly examined

disassembled and photographically documented. All markings relating to the manufacturer, model, serial number, distributor, caliber and cautionary or warning imprints should be recorded. A brief description of the gun's operation should be prepared including - but not necessarily limited to - the basic design and the type of action, hammer, firing pin and safeties.

3. Documentation

The packaging, operating instructions and any other written or graphic materials provided with the gun should be thoroughly reviewed and incorporated in the final test report.

4. Physical Audit

The critical dimensional characteristics of the gun assembly should be determined and should include - but not necessarily be limited to - headspacing, trigger pull, firing pin protrusion, bore diameter and groove diameter.

5. Mallet Test

The purpose of this test is to confirm (or deny) the likelihood of the sample being inadvertently fired through an externally applied impact without destroying or damaging the test sample. This test is intended to be followed by a drop test (Paragraph 6, below) which is destructive and may have to be waived in instances wherein damage to the sample is intolerable such as evidence in a criminal or civil litigation. While the Mallet Test will not inflict surface damage to the assembly the possibility of distorting components whose design strength is exceeded by the force of the impact exists. Therefore, prior to conducting this test it is imperative that -

- a. All interested parties be apprised of the risk of damage or distortion, and
- b. The configuration of significant components be determined (photographed) prior to - and upon completion of - the test to document the change (if any) induced by the test, or
- c. An alternate, non-evidence sample be provided for this test and the follow-on Drop Test. Prior to initiation of this test a Primer Sensitivity Test of the ammunition will be conducted to insure the sensitivity of the primer is within acceptable commercial limits. The proper operation of the assembled gun will be confirmed and a primed cartridge case (shotshell) of the appropriate caliber (gauge) chambered in the test sample. The "loaded" gun is then to be subjected to multiple impacts with a 10 to 15 ounce (avoirdupois) leather or hard rubber mallet. The force of the hand delivered impacts are not necessarily measured but should be initiated with relatively light taps and be incrementally increased to an impact not unlike that used by a professional carpenter to drive a nail. All surfaces of the gun assembly are to be impacted but guns with exposed hammers must be impacted on the exposed portion of the hammer with a blow whose direction is coincidental with the center line of the firing pin. The test is to be conducted with all possible combinations of hammer and safety positions. The primer of the chambered cartridge case

(shotshell) will be inspected after each impact and any imprinted primer which did not fire will immediately be replaced with a fresh casing and the test re-conducted until the gun "discharges" or a total of five identical tests have been conducted. Any "discharge" encountered during the Mallet Test will be recorded and the spent casing (shotshell) retained.

6. Drop Test

The purpose of the Drop Test is to confirm (or deny) the likelihood of the sample being inadvertently fired through being dropped in the loaded configuration. This test is intended to replicate a dropped gun firing, exactly, without regard to physical damage of the test sample and the same risk of damage to the sample and alternate testing procedures discussed in Paragraph 5, above apply. Prior to initiation of this test a Primer Sensitivity Test of the ammunition will be conducted to insure the sensitivity of the primer is within acceptable commercial limits. The proper operation of the sample will be confirmed and a primed cartridge case (shotshell) of the appropriate caliber (gauge) without propellant but with a bullet (shotload) in place will be chambered in the test sample. The magazine of the test sample will be fully loaded with ammunition of the appropriate caliber whose bullet weights are - unless otherwise specified - the heaviest available on the commercial market in that caliber. The gun assembly is then to be subjected to multiple, controlled Drop Tests from a height of 42 inches designed to produce impacts with the centerline of the bore in each of its six cardinal positions. This will require a specially configured drop fixture to control the height of the drop, the orientation of the test sample at impact and the precise area or feature of the sample impacted. The following procedure utilizes one such fixture whose performance has produced acceptable results. The drop frame of the fixture will be raised to the desired drop height over a rigid, vertically - mounted, one inch diameter - hardened (290-320 BHN) steel rod and restrained at that point with an electromagnet. The test sample will be cradled on the drop frame with the desired impact location directly over the end of the steel rod. When current to the electromagnet is interrupted the drop frame cradling the test sample shall reach drop velocities within 2% of the free fall velocity from that height and will continue unimpeded six inches beyond the point at which the sample impacts the rod and is lifted from its cradle. One impact test in each of the six cardinal positions of the sample (muzzle up, muzzle down, right side, left side, top and bottom impacts) will be performed noting the condition of the primed case - fired or unfired - after each test. After completion of the sixth impact wherein no firing of the primer was recorded the condition of the primer will be noted and the test sample will be cocked and fired to confirm the suitability of the primed cartridge case. Any test which results in a "firing" will be noted, another primed cartridge case chambered in the sample and the test continued. The entire sequence of six impacts will be repeated with the hammer and safety in each of their designed positions and combinations thereof, i.e., safety on - hammer cocked, safety on - hammer down, etc. The precise feature of the gun impacted in each test will be that feature most likely to result in an inadvertent firing. The point of impact on all muzzle up tests will - unless otherwise specified - be the spur of the hammer on all samples with exposed hammers. On occasions the evidence may bear markings which indicate a specific feature of the gun was impacted in a dropped gun incident (bruises, abrasions, etc.). Samples of this type should be drop tested to provide for this impact orientation prior to conducting other orientations of Drop Testing.

7. Manipulative Testing - Incomplete Searing

The purpose of this test is to determine the extent to which the hammer-sear

trigger linkage can be mis-oriented to produce "false searing" - best characterized by the sear being tenuously balanced BETWEEN two of its designed positions - from which a slight bump or impact of the gun will result in an inadvertent firing. The gun is to be loaded by chambering an otherwise empty but primer cartridge case (shotshell). By individual and independent manipulation of the hammer trigger and all manually and automatically applied safety features (including set triggers, slide hold open features, etc.), every orientation of the assembly is to be tested to determine if a "false searing" is possible. The test is to be repeated by simultaneous and collective manipulation of the features and components listed above. All firings and firing pin impacts of the primer of the chambered cartridge (shotshell) are to be recorded and the manipulations producing those results repeatedly conducted to determine the precise nature of the deficiency. Once all testing is completed the gun will be disassembled and the deficiencies (if any) documented by examining, dimensioning and photographing the deficient components.

8. Manipulative Testing - Inadvertent Sear Release

The purpose of this test is closely related to that of the Incomplete Searing Test (Paragraph 7, above) except that the searing mechanism is properly and completely sealed at the onset of the test. The components and features described in Paragraph 7, above are then individually and collectively manipulated throughout the full range of their intended orientations and any manipulation which results in a discharge of the gun or indentation of the primer without discharge and which is not the direct result of trigger operation is to be recorded. The manipulation leading to that result are to be repeatedly performed to determine the nature of the component deficiencies.

9. Manipulative Testing - Slam Fire

The purpose of this test is to confirm (or deny) the resistance of the gun assembly to inadvertently firing on closing the breech. This type of inadvertent firing can usually be attributed to one of two causes - an obstruction between the breech face and the primer being crushed into the primer on closing or the linkage designed to restrain the hammer malfunctions allowing the hammer to fall. A third - and almost never encountered - cause of slam fires in rim fired guns is improper headspacing which causes the rim primer to be pinched between the barrel and breech face. In order to evaluate all of the possible variations of this malfunction the Slam Fire Test procedures have been separated into sub-tests, some of which may be waived depending on the configuration of the gun assembly and purpose of the test.

- a. Bolt Action/Center Fired guns - With the gun rigidly fixtured and loaded with a full complement of live ammunition, the bolt is to be vigorously slammed from its rearmost position to its forward - most position. The cartridge will be examined for evidence of any indentation of the primer. The test will be repeated in this manner until a total of fifty slam firing attempts have been completed. The above test is to be conducted - when possible - with the safety on and off and the hammer in all of its design positions. One half (25) of each increment of fifty tests will be conducted by vigorously retracting the bolt after each test and the other half by gently retracting the bolt to the forward most position which will enable proper feeding and cocking of the hammer/striker. Every attempt is to be made in these tests to incompletely sear the striker/hammer so that the forward stroke of the bolt - in and of

itself releases the striker/hammer without manipulation of the trigger (see Paragraph 7, above). The above test is to be repeated in its entirety with only a single round in the magazine/clip of the gun and by hand chambering of each cartridge.

- b. Bolt Action/Rim Fired Guns - The slam fire test of rim-fired, bolt action guns will be conducted as in Paragraph 7 a, above after which an additional test will be conducted to determine the likelihood of inducing a slam fire by progressively increasing the force necessary to deflect the claw type of extractor (on rim-fired guns fitted with this type of extractor) until the gun fires or until the gun will not fire because the bolt will not close. Finally, all bolt action rim-fired guns will be tested to determine the likelihood of inducing a slam fire by progressively shimming the recess intended to accommodate the rim of the cartridge (simulating the presence of foreign material or build-up of firing residues) until the gun fires or until the gun will not fire because the bolt will not close.
- c. Automatically Fed Guns - The slam fire testing of automatically fed guns (rim-fired and center-fired) will be conducted as above with appropriate accommodation and consideration extended to the automatic feed features of the gun.
- d. Rotary Fed Guns - The slam fire test of revolvers and similarly configured guns shall be conducted with the same objective and intent as that put forth in Paragraphs a and b, above with appropriate consideration for variations in loading, feeding, extraction and manipulation unique to rotary-fed guns. Rotary-fed guns chambered for rim-fired cartridges whose cylinders swing to the side for loading will be tested to determine the likelihood of an inadvertent firing resulting from closing the cylinder on an incompletely chambered cartridge. An otherwise empty but primed cartridge case will be incompletely loaded into the rotary magazine (cylinder) of the gun and the rotary magazine (cylinder) slammed vigorously into the closed position. The test will be repeated until each position of the rotary magazine (cylinder) has been tested a total of five times. Any discharge encountered in these tests is to be documented as above.

10. Miscellaneous

The favorable performance of a model of gun in all of the tests presented herein should not be construed as evidence of the completely safe design of that model of gun. Favorable results do indicate that the design and the execution of the design exemplified by the test sample are free of PREDICTABLE and FORESEEABLE deficiencies which could result in an inadvertent firing but no procedure regardless of how well conceived will reliably represent all possible circumstances to which each of thousands of guns of a specific model will be exposed during its useful life. Therefore the prudent testing agent should be constantly aware of unpredictable circumstances and unique firearm features and designs which could effect the safe usage of the gun and be quick to augment the procedures herein with procedures intended to evaluate the impact on overall safety of those circumstances and mechanisms.

REMINGTON FACES A MISFIRING SQUAD



REMYINGTON WAS
A TOP MANAGER
AT THE FIRM
WHEN HE WAS
KILLED IN 1994

Remington's death was a tragedy for the company, which had been a major force in the development of the modern rifle. The company's founder, Eliphalet Remington, had founded the company in 1816, and it had grown into a major force in the development of the modern rifle. The company's founder, Eliphalet Remington, had founded the company in 1816, and it had grown into a major force in the development of the modern rifle.

SQUAD OUTDOOR Remington was a top manager at the firm when he was killed in 1994. The company's founder, Eliphalet Remington, had founded the company in 1816, and it had grown into a major force in the development of the modern rifle. The company's founder, Eliphalet Remington, had founded the company in 1816, and it had grown into a major force in the development of the modern rifle.

[illegible][illegible][illegible][illegible][illegible]

THE STORY OF A GUN

A complete history of the world's most famous rifle, from its invention to the present day. This book tells the story of the Remington-Union Gun, from its invention by John Henry Remington in 1858 to the present day. It is a story of the gun that has been the most famous and successful of all time.



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[illegible]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

LOUIS ALEKSICH, RAINELLE
ALEKSICH and BRENT ALEKSICH,

Plaintiffs,

RICHARD BARBER,

Intervenor,

vs.

REMINGTON ARMS CO., INC., and
E. I. DuPONT DE NEMOURS & CO.,

Defendants.

CV- 91-05-BU -RFC

ORDER PARTIALLY
GRANTING BARBER'S
MOTION TO UNSEAL

FILED

SEP 04 2012

PATRICK E. DUFFY, CLERK
BY Deputy Clerk

I. INTRODUCTION

This products liability action was filed in 1991 by the family of Brent Aleksich, a fourteen-year old who was injured when the family's Remington Model 700 rifle accidentally discharged. Just before the trial was set to commence in March of 1995, the parties settled all claims. As part of the settlement, Plaintiffs agreed to withdraw their pending motion for discovery sanctions. On May 11, 1995, Judge Hatfield dismissed the action, sealed the entire case file, and ordered all involved to keep confidential all discussion concerning the motion for

sanctions, as well as the terms and conditions of the settlement. Doc. 389, (the "May 1995 Order").

In December 1995, Judge Hatfield denied Remington's motion to sanction Plaintiffs' counsel Richard Miller for violating the confidentiality order by distributing Plaintiffs' motion for sanctions. Doc. 406 (the "December 1995 Order"). The December 1995 Order makes clear Judge Hatfield's intent as to what discussions were to remain confidential and exactly what documents were to remain sealed. As recounted in recent Orders of this Court, (docs. 425 & 435), the December 1995 Order lifted the blanket seal on the case file and sealed only two categories of documents, (1) official transcripts, which means the transcript of the March 28, 1995 conferences between the Court and counsel, because that is the only transcript in the file, and (2) "all documents, including the present Order, relating to the defendant's application for order to show cause and for finding of contempt filed July [5]¹, 1995 (specifically those documents commencing with document enumerated No. [390]² through 405, and including the present Order)."

¹ Although the December 1995 Order says July 11, 1995, the docket sheet says the application for order to show cause was filed on July 5, 1995.

² As recounted in the August 7, 2012 Order, Judge Hatfield must have meant doc. 390-406, not 390-400. Doc. 435.

³ Regardless, the entire file remained sealed until this year. Documents 390-406 and 410 remain sealed pending the Court's ruling on the instant motion. Docs. 425 and 435.

The December 1995 Order also made clear what "discussions" were to remain confidential. First, Judge Hatfield expressly states, after a review of the transcript of the March 28, 1995 conference (doc. 410) that "the colloquy which occurred among counsel and the court relative to the compromise agreement and settlement effected by the parties reflects the parties' agreement that the 'terms and conditions' of the compromise agreement and settlement were to remain confidential." Doc. 406, p.2. Second, Judge Hatfield recounted the parties agreement that "any discussion which occurred among the court, or its staff, and counsel relative to the motion for sanctions, and any record generated in relation to those discussions, would remain confidential." Doc. 406, p.3. Later, in rejecting Remington's claim that Miller breached the confidentiality order by distributing his motion for sanctions, Judge Hatfield said:

Contrary to the assertion of defendants, the confidentiality provisions of the [May 1995 Order (doc. 389)] . . . pertained to the disclosure of the discussion which occurred among the court and counsel relative to the court's anticipated disposition of the motion for sanctions, and specifically, the burden which the court intended to impose on defendants relative to the motion. In sum, the conclusions expressed by the court regarding the procedure it intended to implement in disposition of [Plaintiffs'] motion for sanctions constituted the material subjected to the directive of the court.³ The court would be

³It appears that the discussion relating to the "burden which the court intended to impose on defendants relative to the motion [for sanctions]" occurred on March 27, 1995, the date originally scheduled for trial. See doc. 406, pp.1-2 & doc. 393, p.3. No transcript of this

remiss were it to allow the defendants to expand the agreed upon confidentiality to preclude disclosure of the other pleadings and documents of record.

Doc. 406, p.4. In a sealed proceeding, the Court of Appeals for the Ninth Circuit affirmed Judge Hatfield's decision that Plaintiffs' motion for sanctions was not subject to the confidentiality provision of the May 1995 Order. Doc. 434-6.

In October of 2000, Intervenor Richard Barber's son Gus was killed by a Model 700 rifle. He alleges the rifle fired without a trigger pull as Gus's mother pushed the safety to the "off" position to unload it. Doc. 416-1, ¶ 5. Barber, who is a firearms expert dedicated to exposing what he believes is a design flaw in the trigger mechanism of the Remington Model 700 rifle, was allowed to intervene in this case so that he could move to unseal the portions of the file that remain sealed. Doc. 424. Barber believes that public disclosure of the information contained in the sealed documents will force Remington to issue an adequate safety warning and recall the allegedly defective trigger mechanisms from the market.

Pending before the Court is Barber's Motion to Unseal *Alexis* Court Filings. Doc. 426. Barber argues there are no compelling reasons supported by

conference is contained in the file and it is unclear whether this discussion occurred on the record. Since the March 27, 1995 discussions are not court records subject to the common law right of access, this Order does not lift the confidentiality imposed by Judge Hatfield as to those discussions.

specific facts outweighing the public's right to access these court records, especially since they contain information relevant to public safety. Remington, on the other hand, argues these documents should remain sealed because they relate to the confidential settlement of this case and unsealing them would undermine the settlement and discourage future settlements. But since only a couple of the sealed documents relate to the terms and conditions of the settlement—to which Barber does not seek access—most of the documents must be unsealed.

II. ANALYSIS

The common law recognizes a qualified right to inspect and copy judicial records in both civil and criminal proceedings. *United States v. The Business of the Custer Battlefield Museum and Store*, 658 F.3d 1188, 1192 (9th Cir. 2011).³ Since the materials at issue here do not fall within the narrow range of documents that have “traditionally been kept secret for important policy reasons,” such as grand jury materials or warrant materials during a pending investigation, there is

³ Barber also argues that the First Amendment guarantees a right to inspect judicial documents, but it is not yet established in the Ninth Circuit whether the First Amendment right of access applies to civil cases as it does to criminal cases. *Perry v. Brown*, 667 F.3d 1078, 1088 (9th Cir. 2012). In any event, since the common law analysis requires that all documents except those containing the terms and conditions of the settlement be unsealed, and the Court is confident that the First Amendment does not require access to the terms of a confidential settlement of a private dispute, there is no need to consider whether the First Amendment right of access applies here. See *Custer Battlefield Museum and Store*, 658 F.3d at 1197; *Perry*, 667 F.3d at 1088.

no question that the common law right of access applies. *Custer Battlefield Museum and Store*, 658 F.3d R 1192, citing *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Accordingly, the analysis begins with a “strong presumption in favor of access.” *Kamakana*, 447 F.3d at 1178, quoting *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).

The party seeking to seal judicial records can only overcome this strong presumption by “articulating compelling reasons supported by specific factual findings ... that outweigh the general history of access and the public policies favoring disclosure ...” *Id.* at 1178-79. In conducting this analysis, the Court must “conscientiously balance the competing interests of the public” and Remington. *Id.* at 1179. A decision to seal certain records must be based on a compelling reason supported by a factual basis free of hypothesis or conjecture. *Id.*

Generally, “compelling reasons” that outweigh the public’s interest in disclosure are found where the judicial records could be used for improper purposes, such as gratifying private spite, promoting public scandal, circulating libelous statements, or releasing trade secrets. *Id.* citing *Nixon v. Warner Communications, Inc.*, 435 US 589, 598 (1978). The mere fact that release of judicial records will lead to a party’s embarrassment, incrimination, or exposure to

further litigation is not a compelling reason sufficient to outweigh the public's right to access judicial records. *Id.*

Remington's opposition brief makes no attempt to apply these rules and, in fact, cites none of the familiar Ninth Circuit cases governing access to judicial records. Remington argues only that Barber's motion should be denied because the terms and conditions of confidential settlements should remain confidential and unsealing these documents now would undermine the settlement and discourage litigants from settling cases. In so arguing, Remington asserts "the only portions of the *Aleksich* lawsuit that remain confidential are the materials ordered sealed by Judge Hatfield as part of the consideration for the settlement" and that "Judge Hatfield intended to seal only those materials related to the quid-pro-quo that resulted in the *Aleksich* settlement." Doc. 428, p. 2, 3, *but see id.* at p. 6 ("Docket entries 390 through 406 and 410 are all filings related to" Remington's motion to sanction Miller.)

But with the exception of the transcript of the March 28, 1995 conference (doc. 410), which was actually transcribed months after the settlement when Remington was trying to prove that Miller had violated the confidentiality order (doc. 396), these documents cannot possibly relate to the quid-pro-quo that led to the settlement because they did not exist until four months after the case settled on

March 28, 1995. The docket sheet, the December 1995 Order, doc. 406, p. 5, and a review of documents 390-406 confirm that these documents all relate to defendants' motion to sanction Miller for distributing Plaintiffs' motion for discovery sanctions. Again, Barber is not interested in unsealing the terms and conditions of the settlement. Doc. 434, p. 11, n.6.

Accordingly, Remington's purported compelling reason to seal—that unsealing would undermine the settlement—is inapplicable to the vast majority of these documents. Many of these documents relate to procedural motions, such as motions for extensions of time. Docs. 392, 394, 396-400, 402-03, and 405. It is difficult to imagine a compelling reason to maintain such documents under seal.

The remainder of documents 390-406 are briefs on Remington's motion to sanction Miller, as well as Judge Hatfield's December 1995 Order denying the motion and lifting the blanket seal. Docs. 390-91, 393, 395, 401, 404, and 406. The actual text of these documents make no mention of the terms and conditions of the settlement, except that a couple documents mention Plaintiffs' agreement to withdraw their motion for discovery sanctions as part of the settlement. But the Court presumes confidentiality of that particular settlement condition is not a priority since it is repeated throughout Remington's brief in opposition to the motion to unseal, and Remington has made no attempt to seal it.

The actual, unredacted Settlement Agreement and Release, however, is the second document attached to Remington's July 5, 1995 brief in support of motion to sanction Miller. Doc. 391. Barber has not sought public access to this document. Moreover, there is no general history of public access to confidential settlement agreements to private litigation and public access to such documents would undermine existing settlements and perhaps deter future settlements. Accordingly, the Court has no trouble concluding there are compelling reasons to continue the seal on the Settlement Agreement and General Release.

That leaves the transcript of the March 28, 1995 conferences. Doc. 410; also attached to doc. 391. The first 44½ pages have nothing to do with settlement, but rather are a discussion between Judge Hatfield's law clerk and counsel concerning purely procedural matters about how Plaintiffs' counsel would use the newly produced Remington documents at trial, how many depositions Plaintiffs would introduce, whether Plaintiffs would be allowed to use the newly-produced documents in opening. The discussion is typical of final pretrial conferences and the Court finds it hard to believe this transcript would be of interest to anyone. Significantly, this transcript does not contain the "discussion which occurred among the court and counsel relative to the court's anticipated disposition of the motion for sanctions, and specifically the burden which the court intended to

impose upon defendants relative to the motion.” Doc. 406, p.4. It appears that discussion, which remains confidential, occurred the day before on March 27, 1998, *see id.*, p.1-2, doc. 393, p.3 and there is no evidence that conference was transcribed. Accordingly, since pages 1 through line 16 of page 44 do not concern settlement, Remington’s only purported compelling reason is inapplicable, and this portion of the transcript must be unsealed.

After the morning conference on March 28, 1995 with Judge Hatfield’s law clerk, the parties went on the record with Judge Hatfield at approximately 3 p.m. to notify the Court the case had settled. Doc. 410, p.44, line 17. The discussion is brief, addressing the procedure to be followed in memorializing the settlement and dismissing the case, as well as the confidentiality requirements. The only thing in the transcript that must be sealed is the amount of the settlement, which is stated on line 5 of page 45. Since the amount can be easily redacted, the Court sees no reason why the remainder of the transcript should remain sealed.


IV. CONCLUSION AND ORDER

Remington’s has only offered one compelling reason to maintain the seal on documents 390-406 and 410—that public disclosure would defeat the 1995 agreement, undermine the policy favoring settlement, and discourage future settlements. But since documents 390-406 were all created months after the

settlement, and the only mention of settlement terms and conditions occurs in two attachments to those documents. Remington's reason for maintaining the seal is inapplicable, except to the two attachments. Similarly, the transcript of the March 28, 1995 conference (doc. 410, also attached to doc. 401) only mentions settlement in a few pages at the end, and the only objectionable language is the amount of the settlement, which can be easily redacted.

Accordingly, **IT IS HEREBY ORDERED** that Intervenor Barber's Motion to Unseal is **GRANTED IN PART**. The Clerk of Court is directed to unseal documents 390-406, except that the Settlement Agreement and General Release, the second attached document to doc. 391, is to remain sealed. The Clerk of Court is further directed to redact the amount of the settlement from line 5 of page 45 of the transcript of the March 28, 1995 conferences. Doc. 410. Since that transcript is also attached to doc. 401, the Clerk of Court shall also ensure that the settlement amount is redacted from line 5, page 45 of that copy of the transcript.

Dated this 4th day of September, 2012.


Richard F. Cebull
United States District Judge

Remington recalling Model 700™, Model Seven™ rifles with X-Mark Pro® triggers

REMEDY/ACTION TO BE TAKEN: STOP USING YOUR RIFLE:

Any unintended discharge has the potential to cause injury or death. Immediately cease use of recalled rifles and return them to Remington free of charge. Rifles will be inspected, specialty cleaned, tested, and returned as soon as possible, at no cost to you. DO NOT attempt to diagnose or repair recalled rifles. Even after your rifle has been inspected and repaired under this recall program, always follow the Ten Commandments of Firearm safety, printed below, whenever you handle any firearm.

The Ten Commandments of Firearms Safety

1. Always keep the muzzle pointed in a safe direction.
2. Firearms should be unloaded when not actually in use.
3. Don't rely on your gun's safety.
4. Be sure of your target and what's beyond it.
5. Use proper ammunition.
6. If your gun fails to fire when the trigger is pulled, handle with care.
7. Always wear eye and ear protection when shooting.
8. Be sure the barrel is clear of obstructions before shooting.
9. Don't alter or modify your gun and have it serviced regularly.
10. Learn the mechanical and handling characteristics of the firearm you are using.

Short Draft II
XMP Fire Control Only

Declaration of Richard D. Barber

Richard D. Barber, hereby declare as follows on this 6th day of January, 2014:

1. I am over the age of eighteen (18) years old and reside in Gallatin County, in the state of Montana.

2. All of the statements contained within this declaration are made of my own personal knowledge, derived from my experience and extensive research of this subject matter.

3. This issue first came to my attention after the death of my son, Gus Barber, on October 25, 2000. Since that time I have expended a significant quantity of my time, my talent as a researcher, and significant resources to learn the truth surrounding this issue for myself. My research has been featured in numerous news paper articles, locally and throughout the country. My research findings have also been reported by national broadcast news journalism sources—such as CBS, NBC, and CNBC. I have been continually engaged in research and in depth study of this issue, starting into my fourteenth (14th) year.

4. Today, through the many years of research I have invested in this issue, I believe I have somehow become "known" as a nationally recognized authority of this subject matter. This belief becomes evident from the continual communication traffic I receive yearly, from law enforcement agencies investigating incidents involving Remington products, news media, shooting victims or family members looking for answers and Plaintiff's attorney seeking detailed background information.

5. At one time, the phone calls became so frequent—after the CNBC Documentary aired—I had my house phone disconnected in 2010. This measure has slowed the communication traffic down—but I am amazed how resourceful people can be and the interested parties somehow keep finding my contact information. Most recently, to my extreme displeasure—the news media showed up unannounced and pounded on my door for an on the spot interview.

6. I first became aware, by mutual agreement with Remington, for the eventual development of a new fire control to replace the Walker fire control in 2002. The new fire control (to replace the Walker fire control) conceptually was called the SPI (safety pointed link) device. The SPI fire control concept later became known as the X Mark Pro device, when it was eventually marketed for the public in roughly December 2005.

7. Remington's announcement, revealing the eventual release of the X Mark Pro, by notice given to: Jon Sandra via, made in February, 2006, describing the new design features of the X Mark Pro (Attachment #1 - Propagator Extreme - Feb. 2006 Issue).

8. Beginning in 2002, from time to time, I was contacted by representatives of Remington that periodically kept me abreast of the company's progress during the development of a new fire control. My input was derived from my personal knowledge of the company's internal documents at that time. My recommendations included design objectives involving earlier redesign programs to mitigate the potential for malfunctions in the Walker fire control. I acted for purpose of the greater good of the public as an acting consultant to Remington to ensure that a suitable safer alternative design would be eventually designed and marketed. This was accomplished through an arm's length relationship --only reporting my recommendations to Mr. Milner, then CEO or through Dale Wills, Remington's defense counsel.

9. My relationship with Remington lasted roughly until the eventual resignation of then CEO Tommy Milner, sometime in 2009, to the best of my recollection of events today.

10. My limited input into the design of the X Mark Pro fire control were the result of my knowledge of recommendations of earlier design engineers, not only tasked to redesign the Walker fire control, but also other programs, such as the N.B.A.R. program. The design goals of NBAR were to develop entirely new fire control system and/or rifle to "replace the Model 700 rifle." The objective and design goals of earlier fire control development programs were to not only prevent the best of safety related malfunctions --but further, "to put us [Remington] in a more secure position with respect to product liability" (Attachment (i)- July 17, 1980 -O.C. Minute #14).

11. The theme described above, (Attachment (i)) appeared to be important objective to ultimately redesign the Walker fire control during the 1980s. As a matter of fact, this effort was considered to be a "necessity" by Remington management at that time. The company's "incentive" for "improvement" of the Walker fire control is telling indeed: "Necessary to reduce product liability" (Attachment (j)- Firearms Research Div. 1980/1981).

12. Our collective goal was to develop a new fire control with the "ideal safety" and incorporate these features into a proposed new fire control system. I believe I was a driving force promoting this effort. My purpose was to prevent further deaths like Gus' and the incentive to Remington would be to ultimately reduce the company's future product liability exposure concerns. This concern was real. One of the last cases going to trial before 1995, when Remington began settling most all of the bolt action cases resulted in a 17 million dollar jury verdict in favor of Plaintiff --15 million of which was slated for Punitive Damages. (Attachment (k)- 1994 Dallas 45 Week Remington Faces a Multitude Squad).

¹ I also drafted the design objectives for the development of the Model 700, 720, and 740, including the findings suggested by the Walker Fire Control Engineers. The "ideal safety" would take all of these components functionality to be added to the Model 700, which was the product of my limited input during the development of the SA fire control system which later became the X Mark Pro design.

13. One of the procedures that would normally be undertaken by a design engineer would be to review previous redesign projects and new fire control development programs that had been previously running at Remington were at least the early 1970s. This is where I came into the mix, by reporting detailed information I had already learned directly to Remington management for their direct action. I have come to understand the internal politics of implementing such radical departure from previous philosophy and ideology surrounding change within this company. However, this time the directive to implement effective changes, I believe, came from the top down instead of through the normal channels governing the direction of R & D.

14. In 2005, as the development of the X Mark Pro fire control advanced into the design phase, I was invited by Tommy Milner to review, disassemble, inspect, and test fire the designer's model fire controls at the Elisabeth Fowle Kentucky Research and Development (R&D) facility. In attendance were Danny Diaz, the head of Remington R & D and Dale Wills, one of my primary points of contact with Remington. I was very encouraged after my review, inspection, and test firing of the X Mark Pro.

15. Later that same year, (2005) Remington sent a Model 700 rifle fitted with the X Mark Pro to me for testing and evaluation purposes. The rifle bears the serial number S654SXXX.² I still have custody of this rifle today. During my testing and evaluation, I found only one concern which might bear on the end user's safety if not corrected. Dale Wills facilitated a conference call with Danny Diaz to discuss my concern. Upon completion of our discussion, I was requested to send the test rifle back to Remington Research & Development for evaluation and modification, which I did.

16. My concern was functional and not with the integrity of the design itself which I believe is fundamentally sound. My purpose was limited exclusively to design feature recommendations to Remington, limited to the proposed features to be incorporated into the new design, and not how the objectives would eventually be accomplished in the end product.

17. Upon the rifle's return, I found that Remington had adequately corrected my potential safety concern. With my recommended contributions now incorporated into the X Mark Pro, my objective and purpose was complete. My recommendations and limited contribution, include: a trigger and sear block safety, once considered the "ideal safety" and elimination of the problematic trigger connector. After testing, trying to create any forms of failure imaginable, I gave my approval involving the sear lift and blocking function of the safety. Also for the trigger pull characteristics, including trigger return performance that appeared flawless throughout my evaluation.

18. Like anyone involved in effecting change or drastic improvement for the safety of a product, I am very proud of what we (Remington management and I collectively) accomplished together. Throughout this effort, I realize Remington took a big chance permitting me to be involved, albeit, even in a very limited capacity. However, I still remained interested how consumers would come to perceive the end overall performance of the X Mark Pro.

19. Over the years I have had an opportunity to observe feedback from consumers using the X Mark Pro fire control, much in the same way Remington might also. Primarily, this feedback has come from reading public shooting forums on the Internet or talking to other shooters. For a period of time I was troubled and confused by what was being described by shooters using the new fire control. However, I was relieved to observe nobody was reporting any wide spread instances where rifles were reported to have fired without the trigger being pulled as one -from time to time- observes with the Walker fire control system on public forums.

20. The reports that were most concerning to me were generally consistent in nature. Shooters alleged that after a period of use the trigger pulls became very erratic -ranging from two (2) pounds to well over six (6) when checked with a trigger pull gauge. Believing very little of what I read on the Internet, I remained skeptical of the reports. Over a longer duration of time, I observed the alleged instances reporting erratic trigger pulls were becoming more frequent and by a broader population of shooters reporting their experience on public forums.

21. I also received a first-hand account by a Sheriff's Deputy that I know personally. This incident was reported to me at a shooting competition we were both attending. He described that when he went to engage a target, the rifle failed to fire. He thought the safety was engaged. After determining the safety was in fact in the off safe position again he again pulled the trigger and the rifle eventually discharged. If he had touched the bolt, my author feels the rifle may have inadvertently discharged -producing a disconcerted "fails to fire" malfunction." Roughly two (2) years later, the Deputy reported a similar experience to me during a training event with the same duty rifle.

22. In roughly 2012, I was contacted by a local gunsmith knowing my keen interest in Remington products. During this meeting, I was given an opportunity to inspect an X Mark Pro he replaced with an aftermarket fire control. To the best of my knowledge, the owner of the rifle, fitted with an X Mark Pro fire control, complained of the same erratic trigger pull condition as described above in paragraph (20).

23. Upon my inspection of the fire control, I observed only a table and pronounced wear on the top portion of the bar. The pronounced wear appears to have resulted from the cocking

piece riding over the top of the seat, as the seat drops to release the striker during the normal firing cycle of the rifle. Picture of the wear I observed is included. (Attachment (j))

24. I requested custody of the X Mark Pro fire control for evaluation. I still possess custody of this fire control as of this writing.

25. The primary testing parameter I employed was derived from Remington's own internal testing document - January 15, 1980 - to make my evaluation. I used Remington's own testing standard to detect for a possible "defective" condition on the chrome plated Metal Injection Molded (MIM) seat used in the X Mark Pro. The test I performed was conclusive, establishing a "defective" condition is most likely present within MIM seat as the picture included as Attachment (j) demonstrates. The testing outline I performed is included to establish my current belief. (Attachment (m))

26. At no time did I have any input into the metallurgy compounds chosen for use in the X Mark Pro fire control, any more than I have the ability to ensure critical material specification and/or manufacturing tolerance conditions that would need to be historically maintained throughout the product life cycle of the X Mark Pro. I was also not provided any dry cycle testing reports, by Remington, revealing any real or potential premature wear of components in the fire control. Although I believe this testing was conducted prior to public release of the X Mark Pro and the testing results, at least, undoubtedly does or did in fact exist at one time.

27. I would later learn (after the fact) from Mike Walker, he was candidly opposed to the use of Powder Metal compounds to manufacture load bearing parts in fire controls. And especially a seat and trigger. Mike Walker and I had a lengthy relationship which lasted for many years and only ended shortly after the airing of Remington Under Fire. Mike was eventually deplored by Remington and Plaintiff's attorneys for his involvement in the documentary. Mike Walker and I both participated and contributed to the development this documentary. Over the course of many years, I learned many interesting details from Mike Walker just otherwise known outside of Remington.

28. My work product for the development for Remington Under Fire, including the entire content of my personal research archive was also subpoenaed by Remington. However, Remington eventually withdrew their demand after my contention of being protected by the journalist's and/or news gatherers privilege was raised to oppose their effort to seize my personal property and research resources.

29. Exhibit A - Attachment (k)

¹ The likelihood of the guns I made two different models a defective weapon. (The possibility of this without being able to prove this claim is a hard sell. I took attached evidence.)

29. My evaluation of the subject fire control now causes me a new degree of concern for public safety. My findings described above, finally lends a plausible explanation to the shooter reports of erratic trigger pull on the X Mark Pro fire control. (Paragraphs 19-21) Further, research now indicates the "soft seat" condition, I have recently identified, can and will in all likelihood contribute to "safety related problems" that have historically contributed to malfunctions in Remington's products in the past. For instance, compare Attachment (m) and Mike Walker's 1972 Memo memorializing the "fails to fire malfunction." In his own words, Mike Walker, described this malfunction as "*Dangerous.*" (Attachment (b).

30. My concern is further heightened as a result of my current research revealing --between the years 1980 - 1990, Remington had issued Recalls for the Walker fire control involving a strikingly similar condition. The Recalls involved substandard chrome plating and/or "soft seat" construction identified as a "defect" --posing a safety risk to the public --And yet, I have not observed any such widely circulated Recall Notice for the X Mark Pro. To ultimately demonstrate my cause for alarm, I am including four (4) Attachments. This information is related to "soft seats" and/or specifically chrome plating defects that have the potential--according to Remington--to create the likely potential for "safety related problems" in Remington's current products. Attachments (n-1), (n-2), (n-3), and (n-4)*

31. Most recently, while examining the rifle fitted with the early production X Mark Pro fire control, Remington provided to me, I observed a similar pattern of wear manifesting itself in the same location as the fire control pictured in Attachment (l). I was shocked. The rifle Remington sent to me for evaluation has never been live fired, nor do I believe, to the best of my knowledge, the action has been cycled more than two hundred and fifty (250) times since Remington first provided it to me, sometime in 2005. It was never my intent to manually dry cycle the action to make any determination surrounding the soundness of the material composition of the seat, but maybe now I should reconsider this testing to arrive at logical conclusion for myself? My original and primary objective was to ensure positive function of the new safety design and solely myself to ensure a reliable and constant retraction of the trigger.

32. Further, the subject rifle has never been used outdoors or subjected to any form of abrasive particulate I can think of that could have potentially contributed to the recently observed wear on the seat. (Attachment (o).

33. I will admit a certain bias from the pride I feel for my limited involvement in the development of the X Mark Pro, however, I will not be a party to trading one problem for another if it has even a remote chance of posing an unnecessary safety risk to the public. In the

*I have highlighted portions of the documents that I have filled upon for the board for my personal review. As I could not visit the Walker Firearms Alaska practice, Mike provided the pertinent document for your review. This document is not the actual document, but rather a photocopy of the actual document, so I am not sure if it is a true copy, but only a letter to the board.

author's humble opinion, one death is too many and it can be prevented by corrective action. However, history has shown Remington and I greatly differ in this philosophy.

34. This recent research and recently learning that an X Mark Pro fire control was involved in a 2011 fatal incident, injuring two people and claiming the life of a sixteen (16) year old girl is what ultimately prompted me to memorialize my recent research contained within this current Declaration.

35. Remington is hereby put on notice. Based on my information and belief -according to Remington's own internal documents- the condition I have identified above in the X Mark Pro, should be considered a potential contributor as a source of safety related malfunctions in the X Mark Pro and thereby could pose a potential serious safety risk to members of the shooting public.

36. It has come to my attention that Remington is considering a proposed Recall of the Walker fire control system and suggesting a retrofit with the X Mark Pro. I have also observed, Freedom Group, has been expressing an eager willingness to liquidate the holdings of Remington for several years. Before this should occur, Remington or any interested party should conduct research to determine to what extent the current controlling interest of Remington is aware of the deficiency I have identified above and what remedy, if any, Remington has adopted to correct this potentially dangerous condition before going forward with any proposed Recall and/or any asset or stock sale.

37. In closing, it should be noted that those that refuse to learn from history are destined to make the same mistakes in the future. In the author's opinion, Remington would have been millions of dollars ahead today, if they had retrofitted the Walker fire control with the means readily available to them before the release of the Walker fire control in 1948 - the same features I recommended to Remington - thereby altogether avoiding the inevitable day of reckoning the company is faced with today. With that said, it would seem foolish to engage in similar conduct involving the functional reliability of the X Mark Pro as the company attempts to move forward or by future new ownership of Remington, whom should be more than deserving to move the company forward with a clean slate.

38. I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct to the best of my recollection, knowledge and belief.

Executed on: January 2014 by the undersigned:

RICHARD D. BARBER

Prepared by: C.J. Kirchen
Compiled: 10/10/44 - 1 Page
Revised: 2/15/45 - 1 Page
Revised: 7/10/45 - 1 Page
Revised: 11/12/45 - 1 Page
Revised: 1/9/69 - 1 Page

Gun Test #9

Uses: 1. Center Fire Rifles
2. Shotguns
3. Rim Fire Rifles

SAFETY MECHANISM SHOCK TEST

INTRODUCTION

A common source of accidents with firearms is accidental discharge. A safety mechanism is provided to insure against accidental discharge. This test is intended to determine how much shock, if any, will cause the safety mechanism to fail to function properly and allow the gun to be discharged.

CONDITIONS OF TEST:

This test is made by allowing the gun to fall freely a distance of 10 inches upon a solid wood surface with the safety "on". The following positions are used:

1. Butt down
2. Muzzle down
3. Top side down
4. Bottom side down

The trigger shall be tried after each of the above tests to determine whether the safety has released any mechanism which may allow firing.

This test is always made using dummy cartridges and should be conducted very carefully.

STANDARD TEST QUANTITY:

One determination.

AL 0023843

15 of 54

Remington Arms Co., Inc.
Product Service
Legal Case #: 10790

Case Information

RE#	Date Opened	Date Opened(PS)	Date Closed	Incident Date	Pre Lit	Lit	Obsolete
472545	10/22/2014	10/9/2014	10/28/2014	10/4/2014			

Customer Information

Type	Business	First Name	Last Name	Street	City	State	Zip	Age	Contact
Incident		Harry	Alderson	5042 South Scenic Hwy	Bland	VA	24315		H 276-613-1458 E harry.alderon@yahoo.com

Incident Information

Claims	Codes	Repair Est.	Medical Treatment	Medical Status
PI				
PD	Cause:4038	Could Not Duplicate Concern	Unknown	
S FBO	Concern:1020	Fired on Bolt Opening		
C				

10/9/14: Received call from Harry Alderson, he said that he was unloading his rifle and the gun fired while he was opening the bolt. He said that he purchased the gun new a little over a week ago. He said that the trigger has the punch mark on it indicating that the recall has been taken care of. He said that he bought the gun for his son and is now very concerned about him using it. No injury. jbi

Firearm Information

Mfg.	Type	Model/Ga.	SKU	Serial	Bbl.	DOM
Remington	CF BA	700 7MM REM MA	N/A	RR56695E	BI	1/24/2014 11:00:31 AM
Date Purchased	Where Purchased	Accessories	Original Owner			
	WAL MARE STORE 1763	TWO PIECE BASE	Y			

CONCERN:FBO

Ammunition Information - None Defined

Other Products Information - None Defined

Settlement

Remington 700 CF BA

Settlement	Release of Claims	Release Date	Reimbursement	Cash Settlement	Reim. Date APV	Cash Date APV
Per Hon. replace trigger assembly check						

over and test fire
at no charge

Repair/Replacement Repair/Replacement
Cost Date
\$27

10/9/14: Sending ARS, letter, and SR paperwork. Box sent on SAP order 1741507. Ticket # 190076. jbn
10/27/14: Per Jhon, "replace trigger assembly, check over and test fire" at no charge. jbn

Examination[Remington CF BA]

Part	Sub-Part	Code	Comment
Examination	Examiner		K. COFFIN
	Exam Date		10/23/2014
	Product Type		RF
	Action Type		A
	Assigned To		S. NICHOLS
Cause	4038	Could Not Duplicate Concern	
Barrel	Description		26" 7MM REM MAG
	Date Code		BI
	Bore Plugged	False	
	Bulged	False	
	Fired	False	
	Fired while Obstructed		
	Muzzle Crown Condition	Like new; Functioning	
Bolt	Firing Pin	Like new; Functioning	
	Shroud	Like new; Functioning	
	Face	Like new; Functioning	
	Handle	Like new; Functioning	
	Stop	Like new; Functioning	
Extractor	Condition	Like new; Functioning	
	Cut Condition	Like new; Functioning	
	Ext Eject Test	False	
Locking	Block Condition	---Select---	
	Lug Condition	Slightly Worn; Functioning	
	Notch Condition	---Select---	
Overall	Exterior Condition	Like new; Functioning	
	Stock Condition	Like new; Functioning	
	Fore End Condition	---Select---	
Receiver	Condition	Like new; Functioning	
	Bulged	False	

Safety	Description		XMP
	Function	Like new; Functioning	
	Lift	---Select---	011
Sear	Notch	Like new; Functioning	
	Test Fired	False	
Feeding Test	Tests	False	
	Condition	Like new; Functioning	
Trigger	Pull	---Select---	6"
	Altered	False	
	Sub-Assembly	X-Mark Pro	
Non-Remington Components	Description		

PERMUTITON SOUTHWEST CO.
DUON, NY PLANT 511

TECHNICAL DIVISION
TEST & MEASUREMENTS LAB

TEST REPORT

M700 XMP Trigger Assembly
Updated MM Seal Verification

Request #: 20080006

DATE: 7-16-2008

Requested by: C. Becker

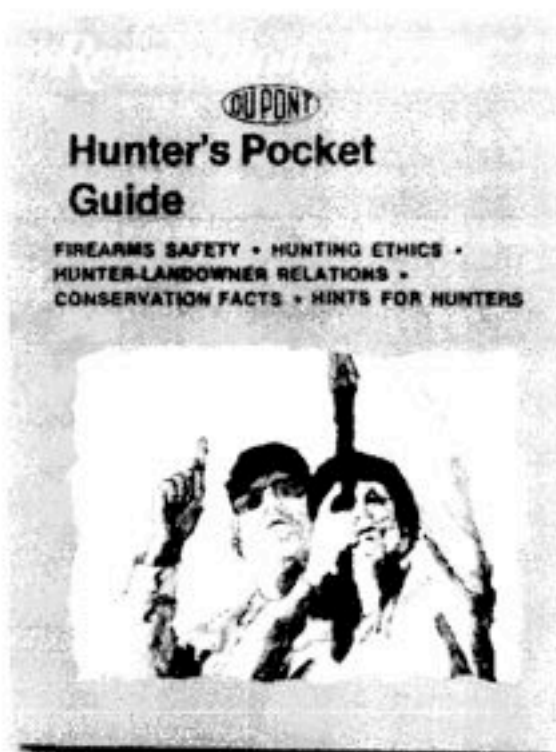
Prepared by: N. Herring

M700 XMP Trigger Assembly

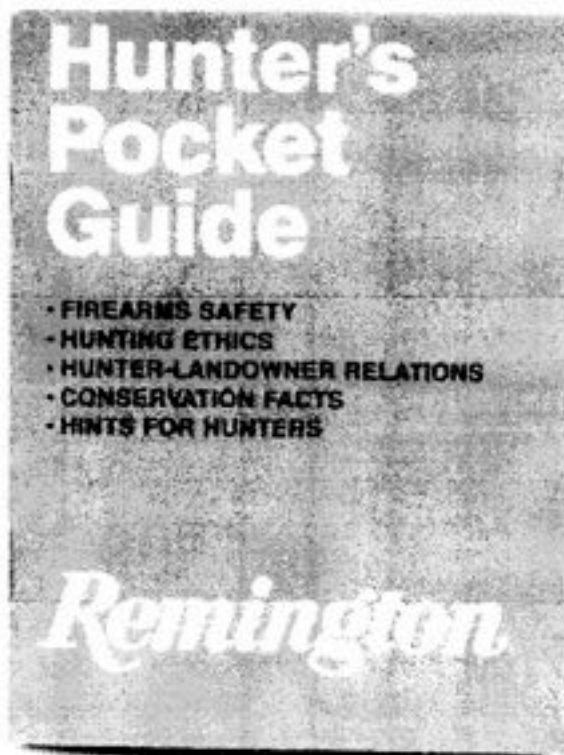
S. Perchuk
C. Shuchman
Becker

Time
M700 XMP
M700 XMP

Before 1979 Revision



After 1979 Revision



Before 1979 Revision



Contents

Remington

Remington-Union Metallic Cartridge Co.
Huntington, West Virginia

Firearms Safety	1
Hunting Ethics	8
Hunter Landowner Relations	15
Game Laws	22
Hints for Hunters	25

After 1979 Revision

Hunting is one of America's oldest and greatest traditions. How well we are able to preserve this tradition may well depend on you. We hope this booklet will help you to remember and practice the important principles of firearms safety and hunter conduct, and to keep everyone aware of the critical role that hunters play in conservation.

Firearms Safety Depends on you

It is your responsibility to ensure that you and others are safe when using firearms. This booklet provides essential information on the safe use of firearms, including the importance of proper storage, handling, and use. It also covers the basics of hunting ethics and landowner relations, as well as the importance of following local game laws and regulations. The booklet is designed to be a helpful resource for hunters of all experience levels, and is a must-read for anyone who uses firearms.

Remington

Remington-Union Metallic Cartridge Co.
Huntington, West Virginia

Before 1979 Revision

Ten Commandments of Firearms Safety

1. Don't point a gun at anyone.
2. Don't touch a gun unless you are told to.
3. Don't play with a gun.
4. Don't shoot at anything unless you are told to.
5. Don't touch a gun unless you are told to.
6. Don't touch a gun unless you are told to.
7. Don't touch a gun unless you are told to.
8. Don't touch a gun unless you are told to.
9. Don't touch a gun unless you are told to.
10. Don't touch a gun unless you are told to.

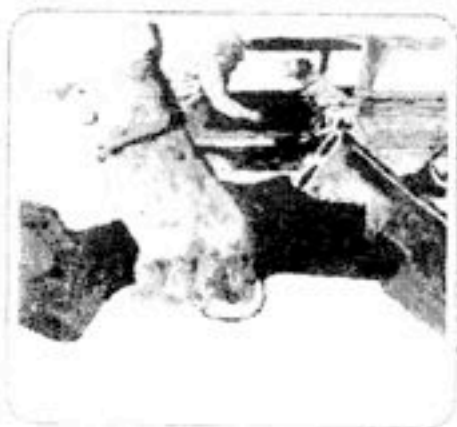


1. Don't point a gun at anyone.
2. Don't touch a gun unless you are told to.

After 1979 Revision



3. Don't point a gun at anyone.
4. Don't touch a gun unless you are told to.
5. Don't play with a gun.



Before 24/9 Revision

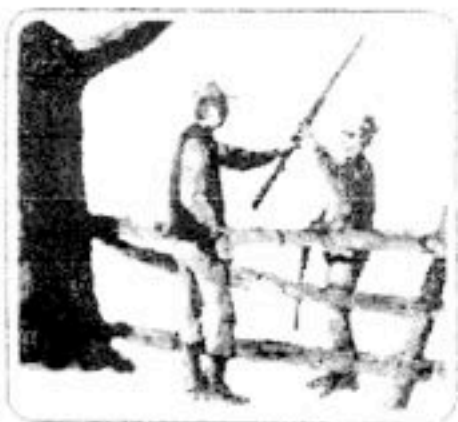


3. Never let anyone take the wheel and control your life.
4. Never give your heart to anything you cannot stand for.
5. Never leave your spiritual life to anyone else.

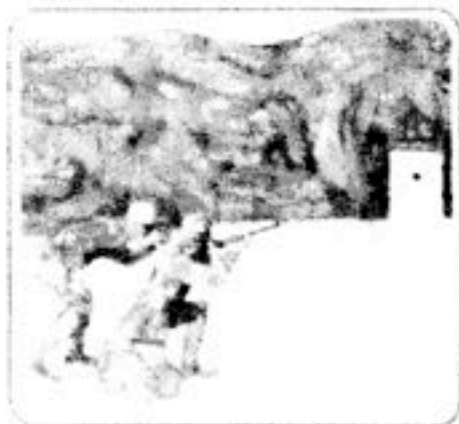
5. Naming: Draw a water molecule (H₂O) and label it.



After 1979 Revision:



Before 1979 Revision



8. Suppose that α is a half- \mathbb{Z} -D surface of the form $\alpha = \alpha_1 + \alpha_2$, where α_1 is a half- \mathbb{Z} -D surface and α_2 is a half- \mathbb{Z} -D surface.



After 1979 Revision



Before 1979 Revision

If you're looking for a new shotgun or rifle for target shooting or hunting, remember Remington. We offer the largest selection of models and styles in America . . . the right gun for every sportsman's needs.

Remington ~~Peters~~



GREAT GUNS DESERVE GREAT AMMUNITION
WE MAKE BOTH



After 1979 Revision

FREE REMINGTON CATALOG

The pleasures and satisfactions of hunting are many, and one of them is the enjoyment found in the performance of the firearms and ammunition.

Remington, America's oldest gunmaker, has a fact-filled catalog you'll surely find helpful in selecting guns and ammunition for the hunting and shooting sports.

Ask your sporting goods dealer for a free copy or send \$2.00 for postage and handling to:

CATALOG OFFER
REMINGTON ARMS COMPANY, INC.
MONTGOMERY BUILDING
1011 CENTRE ROAD
WILMINGTON, DELAWARE 19805

Remington

Remington is a trademark registered in the U.S. Patent & Trademark Office by Remington Arms Company, Inc. which is a trademark of Remington Arms Company, Inc., Springfield, MA. Taurus is a trademark registered in the U.S. Patent & Trademark Office by E. F. du Pont, Remington & Company, Inc.



Member of the
National Shooting Sports Foundation, Inc.

E-7754-94

Printed in U.S.A.

EXHIBIT B

S A A M I

MINUTES OF MEETING
TASK FORCE ON SHOOTING SAFETY
O'HARE RAMADA INN, CHICAGO, ILLINOIS
THURSDAY, APRIL 5, 1979

PRESENT:

J. P. McAndrews, Chairman
W. B. Horn
E. S. McCawley, Jr.
A. I. Mossberg
R. A. Partnoy, Acting Secretary
W. E. Talley

The meeting convened at 11:30 a.m.

The Chairman stated that the meeting was held pursuant to instructions of the Executive Committee to develop a program for communicating more effectively with consumers and the general public concerning safe usage of sporting firearms and ammunition.

Reference was made to recommendations made by Hill and Knowlton, Inc., a public relations/public affairs counseling firm engaged by Remington to provide suggestions on this subject. (See attached Exhibit I.) The Task Force reviewed these suggestions and concluded that many of the ideas presented are feasible and can be readily implemented. Some of them, such as the use of ammunition packages for publicizing these messages, can be implemented directly by member companies. Others can be implemented with SAAMI funding through the National Shooting Sports Foundation. However, in order to move forward with this program, the safety messages to be publicized must first be developed.

After discussion, it was agreed that the Technical Director should provide recommendations regarding the safety messages to be publicized. Each message should be specific and should deal with a major problem concerning safe usage of sporting firearms and ammunition. In this respect, the messages would be similar to the safety messages on automobile usage published by the Shell Oil Company. Possible messages included the need for proper eye and ear protection, the dangers of loading a firearm in a vehicle or in the home, the limitations of a safety, the ranges of various cartridges, and the dangers of keeping a loaded round in the chamber. W. B. Horn was delegated to contact the Technical Director and advise him of the Task Force's considerations on this matter.

18EM 0002537-1

18EM 0007975-1

Task Force on Shooting Safety
Page 2
April 12, 1979

In order to expedite the program, it was decided that implementation planning should begin on the basis of a sample safety message without waiting for all of the messages to be developed and approved. Since the message concerning the limitations of a safety is one which inevitably will be included in the final list of messages to be publicized, this message was selected for initial planning with NSSF. W. E. Talley and E. S. McCawley, Jr., were delegated to meet with the Executive Director of NSSF and commence such planning.

E. S. McCawley, Jr., reported that an article on the limitations of firearms safeties has been written by Col. E. B. Crossman. The article is still in manuscript, but E. S. McCawley, Jr., will contact Col. Crossman to suggest distribution of copies to SAAMI members and to discuss the feasibility of publication in The American Rifleman. E. S. McCawley, Jr., also outlined the concept of a single-issue magazine devoted to safe firearms usage and said he would discuss this with Aqua-Field Publications to obtain cost information.

There was general agreement that this program is important and should be implemented as soon as possible. The intention is to have a budgeted program ready for presentation to the Executive Committee at the June meeting in New Haven. A further meeting of the Task Force will be held in approximately three weeks to receive reports on recommended messages and proposed means of publicity and to prepare the presentation to the Executive Committee.

The meeting adjourned at 2:30 p.m.

RAP:CK
Attachment

A
| REM 0002538 |

1 LUN 0017971 1

DON'T SAY IT—WRITE IT

03582

TO GEORGE MARTINSAFETY MALFUNCTIONS
GALLERYDATE 5-2-75FROM GENE BULLIS

MODEL	MALFUNCTIONS															TOTALS MALFUNK. CL MPE
	FSR			JO			FD			FOS			SWW			
	AB	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
40								4								4
XP 100								3								3
540																
541									2	1						3
580														1		1
581								3	2	1						6
582																
600	1							10	74	55						140
700	9							7	19	10	1				1	47
788	4							3	9	3	2	9	4	14	95	53
REL. MALF. TOTALS	14							30	106	70	3	9	4	14	97	53

TOTAL SAFETY

MALFUNCTION MEANINGS

FSR - FIRES WHEN SAFE IS RELEASED - SELF EXPL.

JO - JARS OFF (HAMMER FAILS TO STAY ENGAGED WITH SEAR AND FALLS DOWN WHEN GUN IS JARRED.)

FD - FALLS DOWN (COCKING PIECE FAILS TO PROPERLY ENGAGE WITH SEAR AND FOLLOWS THE COCKING CAM SURFACE OF THE BOLT TO THE FIRED POSITION)

FOS - FIRES ON SAFE (GUN FIRES WITH SAFE IN "ON" POSITION WHEN TRIGGER IS PULLED).

SWW - SAFETY WON'T WORK - SELF EXPL.

010000150

* - 1975 DATA FROM DEC. 26, AM TO APRIL 230, 1975 ONLY.

1 : 51

Case No. 4:13-CV-00086-ODS

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EXHIBITS

Exhibit A – Claim Forms

Exhibit B – Long Form Notice

Exhibit C – Short Form Notice

Exhibit D – Direct Notice

Exhibit E – CAFA Notice

This Settlement Agreement, including its attached Exhibits, is entered into as of this 5th day of December, 2014, by and among Plaintiffs, on behalf of themselves and on behalf of the Settlement Class Members, and Defendants Remington Arms Company, LLC, E.I. du Pont de Nemours & Company, and Sporting Goods Properties, Inc., to settle and compromise the Action and to discharge the Released Parties as set forth herein.

I. RECITALS

WHEREAS, until November 30, 1993, the Delaware company known as Remington Arms Company, Inc. was a wholly-owned subsidiary of E.I. du Pont de Nemours & Company ("Du Pont") and was engaged in the business of designing, manufacturing, and selling firearms and ammunition products;

WHEREAS, on December 1, 1993, Du Pont sold substantially all of the assets of Remington Arms Company, Inc. to Remington Acquisition Corporation, Inc. ("RACI");

WHEREAS, Remington Arms Company, Inc. then changed its name to Sporting Goods Properties, Inc. ("SGPI"), and SGPI remains a wholly-owned Du Pont subsidiary;

WHEREAS, RACI is now known as Remington Arms Company, LLC ("Remington");

WHEREAS, from 1948 through November 30, 1993, SGPI manufactured certain models of firearms which incorporated trigger mechanisms utilizing a component known as a trigger connector, including the Model 700 bolt-action rifle containing the Walker trigger mechanism;¹

WHEREAS, after December 1, 1993, Remington manufactured certain models of firearms which incorporated trigger mechanisms utilizing a component known as a trigger connector, including the Model 700 bolt-action rifle containing the Walker trigger mechanism;

WHEREAS, beginning in May 2006, Remington began to manufacture certain firearms with trigger mechanisms that did not utilize a trigger connector component;

WHEREAS, such trigger mechanisms on Model 700 and Model Seven rifles are known as X-Mark Pro® trigger mechanisms;

WHEREAS, Plaintiffs' Counsel filed four putative class actions against Defendants in federal district courts in 2012 and 2013 arising out of the marketing and sale of Model 700 bolt-action rifles containing the Walker trigger mechanism (*Chapman v. Remington Arms Co., LLC et al.*, No. 1:12-cv-24561 (S.D. Fla. Dec. 31, 2012); *Pollard v. Remington Arms Co., LLC et al.*, No. 4:13-cv-00086 (W.D. Mo. Jan. 28, 2013); *Moodie v. Remington Arms Co., LLC et al.*, No. 2:13-cv-00172 (W.D. Wash. Jan. 29, 2013); *Huleatt v. Remington Arms Co., LLC et al.*, No. 9:13-cv-00113 (D. Mont. June 4, 2013)) (hereinafter "the putative class actions");

WHEREAS, unrelated counsel filed a fifth putative class action against Defendants in federal district court in December 2013 arising out of the marketing and sale of Model 700 bolt-action rifles containing the Walker trigger mechanism (*Hembree v. Remington Arms Co., LLC et al.*,

¹ SGPI has not been engaged in the firearms and ammunition business since December 1, 1993.

No. 3:13-cv-05161 (W.D. Mo. Dec. 17, 2013)), which was later dismissed pursuant to Rule 41 on December 30, 2013. The *Hembree* action was a nearly identical lawsuit that made identical claims to the putative class actions;

WHEREAS, the plaintiffs in the putative class actions alleged that the Walker trigger mechanism is defectively designed because it utilizes a trigger connector which can result in accidental discharges without the trigger being pulled, and that the value and utility of such Model 700 bolt-action rifles have been diminished as a result of the alleged defective design;

WHEREAS, the plaintiffs in the putative class actions sought damages and equitable relief, on behalf of themselves and other class members, premised on alleged economic losses, and did not seek damages or other relief for personal injury or property damage claims;

WHEREAS, the plaintiffs in *Chapman*, *Pollard*, *Moodie*, and *Huleatt* alleged that Remington's X-Mark Pro trigger mechanism was a safe alternative to the Walker trigger mechanism;

WHEREAS, Defendants filed motions to dismiss in *Chapman*, *Pollard*, *Moodie*, and *Huleatt*, resulting in the dismissal of some but not all claims in *Pollard* and *Moodie* on June 17 and August 2, 2013, respectively;

WHEREAS, the Parties served written discovery requests in *Chapman*, *Pollard*, and *Moodie*;

WHEREAS, *Chapman* was voluntarily dismissed on August 21, 2013, *Huleatt* was voluntarily dismissed on October 1, 2013, and, as set forth above, *Hembree* was voluntarily dismissed on December 30, 2013, resulting in the maintenance of *Pollard* and *Moodie* only;

WHEREAS, the Parties served responses and objections to written discovery requests in *Pollard* and *Moodie*;

WHEREAS, certain of Plaintiffs' Counsel had previously conducted extensive discovery regarding Model 700 bolt-action rifles and the Walker trigger mechanism from prior and pending litigation against Defendants, Defendants as part of that prior discovery produced hundreds of thousands of documents dealing with the core issues in the present litigation, *i.e.*, the design of the Walker trigger mechanism and the accidental discharging of rifles without a trigger pull, and the Parties in this litigation agreed that Defendants would not be required to reproduce documents that were already within Plaintiffs' Counsel's possession;

WHEREAS, Plaintiffs' Counsel reviewed over 1,000,000 pages of documents as part of their investigation and analysis into the facts of this litigation;

WHEREAS, Plaintiffs' Counsel conducted extensive investigations into the facts and circumstances related to this litigation, including consulting with experts, interviewing potential witnesses, conducting inspections of firearms, and researching and studying legal principles applicable to the issues of liability, damages, jurisdiction and procedure;

WHEREAS, while discovery was being conducted, settlement discussions commenced in the summer of 2013;

WHEREAS, in approximately September 2013, the settlement discussions progressed to the point where the Parties decided that the next step would be to participate in non-binding mediation. As a result, the Parties informed the *Pollard* and *Moodie* courts of their intention to attempt to mediate the cases, and were granted requests to maintain the current status of the cases pending mediation;

WHEREAS, the Parties, through their counsel, attended and participated in five in-person mediation sessions conducted by John W. Perry ("the Mediator"), who is an experienced, independent mediator, and further engaged in additional extensive communications with the Mediator and each other;

WHEREAS, prior to and during the mediation sessions, the Parties exchanged information and documents which allowed each side to further evaluate their claims and defenses;

WHEREAS, while mediation was ongoing, the Parties agreed that Remington's X-Mark Pro trigger mechanism could be an appropriate retrofit for Remington Model 700, Seven, Sportsman 78, and 673 firearms containing a Walker trigger mechanism, subject to confirmatory discovery and confirmation by Plaintiffs' experts;

WHEREAS, also while mediation was ongoing, the Parties agreed that the current Model 770 Connectorless Trigger Mechanism could be an appropriate retrofit for Remington Model 710, 715, and 770 firearms containing a trigger mechanism that utilizes a trigger connector, subject to confirmatory discovery and confirmation by Plaintiffs' experts;

WHEREAS, after the agreement that the X-Mark Pro trigger mechanism was an appropriate retrofit, Remington learned that the then-existing X-Mark Pro assembly process created the potential for the application of an excess amount of bonding agent, which could cause Model 700 and Model Seven bolt-action rifles containing X-Mark Pro trigger mechanisms to discharge without a trigger pull under certain limited conditions;

WHEREAS, Plaintiffs' Counsel were informed by Remington, and through their own independent investigations, of certain limited conditions which could potentially cause Model 700 and Model Seven bolt-action rifles containing X-Mark Pro trigger mechanisms to discharge without a trigger pull;

WHEREAS, the Parties are unaware of any personal injury caused by or as a consequence of an X-Mark Pro assembled with excess bonding agent;

WHEREAS, on or about April 11, 2014, and after consultation and coordination with Plaintiffs' Counsel, Remington undertook a voluntary recall of all Model 700 and Model Seven bolt-action rifles containing X-Mark Pro trigger mechanisms manufactured from May 1, 2006 to April 9, 2014;

WHEREAS, under the terms of the voluntary recall, Remington instituted a specialty cleaning, inspection, and testing process to remove any excess bonding agent that may have been applied in affected X-Mark Pro trigger mechanisms;

WHEREAS, Remington also changed and improved its assembly processes with regard to the X-Mark Pro trigger mechanism, so the excess bonding agent issue cannot occur again;

WHEREAS, Plaintiffs' and Defendants' experts agree that triggers that have been specialty cleaned, inspected, and tested are equivalent in terms of safety and performance as triggers manufactured under the changed and improved assembly process;

WHEREAS, once Remington was able to manufacture substantial numbers of X-Mark Pro trigger mechanisms to be used as replacement triggers in affected rifles, it provided recall participants the option to receive a replacement trigger or have their trigger specialty cleaned;

WHEREAS, current participants in the voluntary recall are provided with new triggers manufactured under the changed and improved assembly process rather than the specialty clean, inspection, and testing;

WHEREAS, Plaintiffs' Counsel filed motions for leave to amend the complaints in *Pollard* and *Moodie* to include additional class action allegations arising out of the X-Mark Pro recall;

WHEREAS, Plaintiffs' experts, along with their Counsel, have conducted an inspection of Remington's changed and improved assembly process, examined X-Mark Pro trigger mechanisms manufactured and assembled under the revised process, and confirmed that X-Mark Pro trigger mechanisms manufactured under the revised assembly process are safe and reliable mechanisms suitable for retrofit in Remington Model 700, Seven, Sportsman 78, and 673 firearms containing a Walker trigger mechanism;

WHEREAS, the Parties continued to mediate the cases, and following the fifth in-person mediation session, the Parties reached the material terms of this Settlement Agreement in July 2014;

WHEREAS, Plaintiffs intend to file a proposed amended complaint in *Pollard* in conjunction with this Settlement Agreement that seeks certification of two nationwide settlement classes to encompass economic-loss claims involving: (1) all Model 700, 721, 722, 725, Seven, Sportsman 78, 600, 660, 673, XP-100, 710, 715, and 770 firearms manufactured by Remington or SGPI that contain trigger mechanisms that utilize a trigger connector; and (2) Model 700 and Seven bolt-action rifles containing X-Mark Pro trigger mechanisms that are subject to the April 2014 voluntary recall;

WHEREAS, in July 2014, the Parties notified this Court and the *Moodie* court of their desire to resolve both cases through the certification of the aforementioned nationwide settlement classes;

WHEREAS, Plaintiffs believe that the claims asserted in the Action have substantial merit; however, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Classes, Plaintiffs and their Counsel have concluded that the Settlement Agreement provides substantial benefits to the Settlement Classes, and is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Classes;

WHEREAS, Defendants deny that the design of the Walker trigger mechanism or other trigger mechanisms utilizing a trigger connector are defective and can result in accidental discharges without the trigger being pulled, as well as deny Plaintiffs' remaining allegations, wrongdoing of any kind, and believe that the Action is without merit, Defendants have also taken into account the uncertainty, risk, delay, and costs inherent in litigation and agreed to enter into the Settlement Agreement to avoid any further litigation expenses and inconvenience, to remove the distraction of burdensome and protracted litigation, and to provide customers with the benefits outlined below rather than spending this money on costly litigation;

WHEREAS, Defendants have agreed to class treatment of the claims asserted in the Action solely for the purpose of effectuating the compromise and Settlement of those claims on class bases, as set forth herein, and deny that the Action properly could proceed on class bases for purposes of litigation or for trial;

WHEREAS, it is the intention and desire of the Parties to compromise, resolve, dismiss and release all allegations, disputes, and claims for damages or equitable relief arising out of, or relating to, the sale, marketing, design, and/or use of the trigger mechanisms in all of the firearms that are the subject of this Settlement on the terms set forth in the Settlement Agreement that have been or could have been brought by Plaintiffs themselves and on behalf of Settlement Class Members against Defendants;

WHEREAS, the Parties agree that the Settlement is fair, reasonable, and adequate, and is an appropriate nationwide resolution accomplished through the benefits, releases, and orders set forth in or attached to this Settlement Agreement;

WHEREAS, the Parties desire not only to end further burdensome and protracted litigation but also to create the claims process that is set forth herein;

NOW, THEREFORE, without an admission or concession on the part of Plaintiffs on the lack of merit of the Action or an admission or concession of liability or wrongdoing or the lack of merit of any defense by Defendants, it is stipulated and agreed by Defendants and Plaintiffs, acting for themselves and on behalf of the Settlement Classes, that, on the following terms and conditions, the Action shall be settled and dismissed with prejudice as among Plaintiffs, the Settlement Classes, and Defendants upon Final Approval of the Court after the hearing(s) provided for in the Settlement; and the Settlement Class Members shall release all Released Claims against Defendants and all Released Parties.

II. DEFINITIONS

1. As used in this Settlement Agreement, the following terms shall have the defined meanings set forth below.
2. "Action" means the case originally captioned *Ian Pollard v. Remington Arms Co., LLC et al.*, No. 4:13-cv-00086, originally filed in the United States District Court for the Western District of Missouri on January 28, 2013.

3. "Attorneys' Fees and Expenses" means the amounts approved by the Court for payment to Class Counsel, including attorneys' fees, costs, litigation expenses, fees and expenses of experts.
4. "Claim Form" means the claim form, substantially in the form set forth in Exhibit A to this Settlement Agreement, which must be timely and fully completed and submitted by any Settlement Class Member in order to be eligible for any settlement benefits. The Claim Form will be available on the Settlement Website and by calling the Settlement Phone Number.
5. "Claims Period" means the time during which any Settlement Class Member may submit a Claim Form under the Settlement. The Claims Period begins upon entry of the Preliminary Approval Order and expires eighteen (18) months after the Effective Date.
6. "Claims Process" means the process by which Settlement Class Members may request and receive settlement benefits.
7. "Class Action Settlement Administrator" means Angeion Group.
8. "Class Counsel" means Jon D. Robinson, of Bolen Robinson & Ellis, LLP, and Richard J. Arsenault, of Neblett Beard & Arsenault.
9. "Connectorless Trigger Mechanism" means a trigger mechanism that does not utilize a trigger connector, and includes the X-Mark Pro trigger mechanism and the current Model 770 trigger mechanism.
10. "Court" means the United States District Court for the Western District of Missouri.
11. "Defendants" means Remington Arms Company, LLC; E.I. du Pont de Nemours & Company; and Sporting Goods Properties, Inc.
12. "Defendants' Counsel" means the following, either individually or collectively:

Dale G. Wills
SWANSON, MARTIN & BELL, LLP
330 North Wabash Avenue, Suite 3300
Chicago, IL 60611
Phone: (312) 923-8266

John K. Sherk
SHOOK, HARDY & BACON LLP
2555 Grand Blvd.
Kansas City, MO 64108
Phone: (816) 474-6550
13. "Direct Notice" means the form of notice described in ¶ 60.
14. "Du Pont" means E.I. du Pont de Nemours & Company.

15. "Effective Date" means the latest date on which the Final Approval Order approving this Agreement becomes final. For purposes of this Agreement: (a) if no appeal has been taken from the Final Order, the Effective Date is the date on which the time to appeal therefrom has expired; or (b) if any appeal has been taken from the Final Order, the Effective Date means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of and/or have expired in a manner that affirms the Final Order; or (c) if Plaintiffs' Counsel and Defendants agree in writing, the Effective Date can occur on any other agreed date.
16. "Long Form Notice" means the form of notice described in ¶¶ 62-63.
17. "Mediator" means John W. Perry, Esq., of Perry Dampf Dispute Solutions, 721 Government Street, Suite 102, Baton Rouge, Louisiana 70802.
18. "Notice" means the Court-approved form of notice of this Settlement Agreement to the Settlement Classes, as described in Section V below, and substantially in the forms attached hereto as Exhibits B through D (Long Form Notice, Short Form Notice, and Direct Notice).
19. "Notice and Claims Administration Expenses" means all reasonable costs and expenses incurred in connection with preparing, printing, publishing, and mailing the Notice, as well as processing claims and administering the Settlement Agreement.
20. "Notice Plan" means the plan for disseminating Notice to the Settlement Classes, which shall include: (1) publication of a Short Form Notice; (2) Direct Notice; and (3) maintenance of a Settlement Website, which shall make available the Short Form Notice, Long Form Notice, Claim Form, Settlement Agreement, joint press release, joint motion for preliminary approval of class action settlement, Preliminary Approval Order, Class Counsel's request for fees, and Final Approval Order.
21. "Parties" means Plaintiffs and Defendants.
22. "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, business, legal entity, government or any political subdivision or agency thereof.
23. "Plaintiffs" means Rodney Barbre, Wallace Brown, Gordon Hardaway, William Moodie, Ian Pollard, Jay Streeter, James Waterman, and Mitchell Winterburn.
24. "Plaintiffs' Counsel" means the following, either individually or collectively, in whole or in part:

Jon D. Robinson
Christopher Ellis
BOLEN ROBINSON & ELLIS, LLP
202 South Franklin, 2nd Floor
Decatur, IL 62523

Richard Arsenault
NEBLETT, BEARD & ARSENAULT
2220 Bonaventure Court
Alexandria, LA 71301

John R. Climaco
John A. Peca
CLIMACO, WILCOX, PECA, TARANTINO
& GAROFOLI CO., LPA
55 Public, Suite 1950
Cleveland, OH 44113

Jordan L. Chaikin
PARKER WAICHMAN LLP
27300 Riverview Center Boulevard Suite 103
Bonita Springs, FL 34134

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R. Seth Crompton
HOLLAND, GROVES, SCHNELLER &
STOLZE, LLC
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MONSEES & MAYER, PC
4717 Grand Avenue, Suite 820
Kansas City, MO 64112

W. Mark Lanier
LANIER LAW FIRM
6810 FM 1960 West
Houston, TX 77069

25. "Preliminary Approval Order" means the order to be entered by the Court pursuant to the Settlement Agreement, substantially in the form that shall be transmitted to the Courtroom Deputy concurrently with the Motion for Preliminary Approval.
26. "Released Claims" means all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing now or arising in the future, whether known or unknown, both at law and in equity which were or could have been brought against Defendants, or any of them, based upon or related in any way to the trigger mechanisms in the rifle models subject to the Settlement Agreement or any component parts thereof, whether arising under statute, rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or regulation, any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi-contract, unjust enrichment, express warranty, implied

warranty, and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, or any other legal or equitable relief. Released claims also include any claim for attorneys' fees, expenses, costs, and catalyst fees under any state's law or under federal law. This release expressly exempts claims for personal injury and personal property damage.

27. "Released Persons" means Defendants Remington Arms Company, LLC; E.I. du Pont de Nemours & Company; Sporting Goods Properties, Inc.; all manufacturers and assemblers of Settlement Firearms, and each of their component parts; the entities supplying the aforementioned companies with component parts; and all past, present and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, limited partners, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all the foregoing Persons.
28. "Releasing Persons" shall include Plaintiffs and all Settlement Class Members, and each of their respective heirs, executors, representatives, agents, assigns, and successors.
29. "Remington" means Remington Arms Company, LLC.
30. "Remington Authorized Repair Center" or "RARC" means the following third-party entities that Remington has authorized to remove and replace trigger mechanisms pursuant to this Settlement Agreement. Additional Remington Authorized Repair Centers are being established and will be listed on the Settlement Website and communicated via the Settlement Phone Number.

Alhman's Inc.
9525 West 230th Street
Morristown, MN 55052
507-685-4244

Allison & Carey Gunworks
17311 South East Stark
Portland, OR 97233
503-256-5166

B&B Arms LLC
9283 US HWY 220 Business, North
Randleman, NC 27317
336-339-3199

Carter Gunsmithing
938 West Utah Ave.
Payson, UT 84651
801-465-7945

Dick Williams Gun Shop, Inc.
4985 Cole Road
Saginaw, MI 48601
989-777-1240

The Gunworks of Central New York
5366 State Route 31
Verona, NY 13478
315-363-7041

J & G Gunsmithing
7680 Barton Rd.
Granite Bay, CA 95746
916-786-9200

Mark's Outdoor Sports
1400-B Montgomery Hwy.
Birmingham, AL 35216
205-822-3155

Paducah Shooters Supply
3919 Cairo Road
Paducah, KY 42001
877-772-3006

Scheels All Sport
Jordan Creek Town Center
101 Jordan Creek Parkway
West Des Moines, IA 50266
515-727-4065

Skip's Gun Shop
837 Lake Street
Bristol, NH 03222
603-744-3100

Sports World
6841 East 41 Street
Tulsa, OK 74145
918-742-4027

Triton Arms
7668 Peppers Ferry Rd.
Max Meadows, VA 24360
276-620-8571

Wild West Guns
7100 Homer Drive
Anchorage, AK 99518
907-344-4500

Mann & Son Sporting Goods
515 West Water Street
Pinckneyville, IL 62274
618-357-2911

McClelland Gun Shop
1533 Centerville Road
Dallas, TX 75228
214-321-0231

Reloading Center
515 West Main Street
Burley, ID 83318
208-878-5053

Scheels All Sport
2101 West 41st Street
Sioux Falls, SD 57105
605-334-7767

Southland Gun Works, Inc.
1228 Harry Byrd Hwy
Darlington, SC 29532
843-393-6291

Sprague's Sports Inc.
345 W 32nd St.
Yuma, AZ 85364
928-726-0022

Upper Missouri Trading Company, Inc.
PO Box 100/304 Harold Street
Crofton, NE 68730
402-388-4844

Williams Gun Sight & Outfitters
7389 Lapeer Road
Davison, MI 48423
810-653-2131

31. "Settlement" means the settlement set forth in this Settlement Agreement.
32. "Settlement Agreement" means this document which describes the Settlement.
33. "Settlement Class A" means all current owners of Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms

containing a Remington trigger mechanism that utilizes a trigger connector. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the Action and members of their families; (c) governmental purchasers; (d) Remington Arms Company, LLC, Sporting Goods Properties, Inc., E.I. du Pont Nemours & Company, and each of their subsidiaries and affiliates. Membership in Settlement Class A shall be determined as of the date of the Preliminary Approval Order.

34. "Settlement Class B" means all current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014; and all current and former owners of Remington Model 700 and Model Seven rifles who replaced their rifle's original Walker trigger mechanism with an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the Action and members of their families; (c) governmental purchasers; (d) Remington Arms Company, LLC, Sporting Goods Properties, Inc., E.I. du Pont Nemours & Company, and each of their subsidiaries and affiliates. Membership in Settlement Class B shall be determined as of the date of the Preliminary Approval Order.
35. "Settlement Classes" means Settlement Class A and Settlement Class B.
36. "Settlement Class Members" means all persons who are members of one or both Settlement Classes and who do not timely and properly request exclusion from the Settlement Class(es) to which they belong pursuant to the terms of this Agreement.
37. "Settlement Firearm" means Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms containing a trigger mechanism that utilizes a trigger connector; and Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014.
38. "Settlement Website" means the website that will provide Settlement Class Members with information about the Settlement, and which will be located at www.remingtonfirearmsclassactionsettlement.com.
39. "Settlement Phone Number" means the toll-free telephone number that Settlement Class Members can call to obtain information about the Settlement from an authorized representative.
40. "Settling Parties" means Settlement Class Members and Defendants.
41. "SGPI" means Sporting Goods Properties, Inc.
42. "Short Form Notice" means the form of notice described in ¶ 61 which the Class Action Settlement Administrator will cause to be published in certain print media as part of the Notice Plan.

43. "Trigger connector" means the component part in certain Remington trigger mechanisms, including the Walker trigger mechanism, which engages with the sear.
44. "Walker trigger mechanism" means the Remington trigger mechanism in certain Remington firearms, including Model 700 bolt-action rifles manufactured prior to 2006, which utilizes a trigger connector.
45. "X-Mark Pro trigger mechanism" means the Remington trigger mechanism in certain Remington firearms, including Model 700 bolt-action rifles manufactured beginning in 2006, which does not utilize a trigger connector.
46. "United States" means the United States and its territories.

III. REQUIRED EVENTS

47. In conjunction with filing the executed Settlement Agreement with the Court, Plaintiffs shall file a motion for leave to file an Amended Class Action Complaint naming Rodney Barbre, Wallace Brown, Gordon Hardaway, William Moodie, Ian Pollard, Jay Streeter, James Waterman, and Mitchel Winterburn as Plaintiffs and seeking certification of the following Settlement Classes:

Settlement Class A:

All current owners of Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms containing a Remington trigger mechanism that utilizes a trigger connector. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the Action and members of their families; (c) governmental purchasers; (d) Remington Arms Company, LLC, Sporting Goods Properties, Inc., E.I. du Pont Nemours & Company, and each of their subsidiaries and affiliates.

Settlement Class B:

All current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014; and all current and former owners of Remington Model 700 and Model Seven rifles who replaced their rifle's original Walker trigger mechanism with an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the Action and members of their families; (c) governmental purchasers; (d) Remington Arms Company, LLC, Sporting Goods Properties, Inc., E.I. du Pont Nemours & Company, and each of their subsidiaries and affiliates.

48. Within a reasonable time following the filing of this Settlement Agreement with the Court, the Parties also agree to file a joint motion to stay in connection with case number 2:13-cv-00172-JCC, *Moodie, et al. v. Remington, et al.* (W.D. Wash., Coughenour, J.) (the "*Moodie*" or "Washington Action"). The joint motion to stay will seek to stay the

Remington®

PRODUCT SAFETY WARNING AND RECALL NOTICE



REMINGTON MODEL 700™ AND MODEL SEVEN™ RIFLES



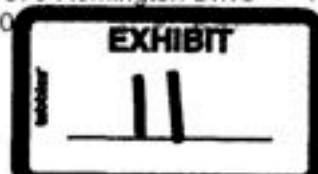
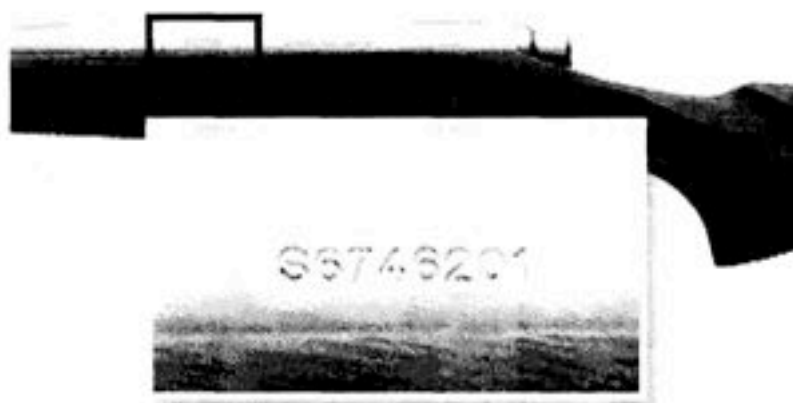
PRODUCTS: Remington Arms Company, LLC ("Remington") is voluntarily recalling Remington Model 700™ and Model Seven™ rifles with X-Mark Pro® ("XMP®") triggers, manufactured from May 1, 2006 to April 9, 2014.

DESCRIPTION OF THE HAZARD: Remington has determined that some Model 700 and Model Seven rifles with XMP triggers could, under certain circumstances, **unintentionally discharge**. A Remington investigation has determined that some XMP triggers might have excess bonding agent used in the assembly process. While Remington has the utmost confidence in the design of the XMP trigger, it is undertaking this recall in the interest of consumer safety to remove any potential excess bonding agent applied in the assembly process.

HOW TO DETERMINE IF YOUR RIFLE IS SUBJECT TO THE RECALL: Only Model 700 and Model Seven rifles with XMP triggers are being recalled. To determine if your rifle is subject to this recall, you should take the following steps:

- I. Find the rifle's serial number where the barrel meets the receiver. SEE GRAPHIC A
 - a. For a right-handed rifle, the serial number is located on a user's left.
 - b. For a left-handed rifle, the serial number is located on a user's right.

GRAPHIC A: HOW TO FIND YOUR SERIAL NUMBER.



Remington®

- II. Identify the serial number and provide it to Remington's recall support team, either by entering it at xmprecall.remington.com or calling 1-800-243-9700 (Prompt #3 then Prompt #1) Monday through Friday, 9 a.m. to 5 p.m. EDT. You will be informed if your rifle is affected by this recall and supported with free resources to return the rifle for inspection and specialized cleaning.
- III. You may also determine if your rifle is subject to the recall by a visual inspection.
 - 1) If the face of the trigger is ribbed (see Photo (1) below), your rifle does not have an XMP trigger and is NOT subject to this recall.
 - 2) If the face of the trigger is smooth (see Photo (2) below), your rifle has an XMP trigger and IS subject to this recall – in which case you should immediately seek further assistance at xmprecall.remington.com or by calling 1-800-243-9700 (Prompt #3 then Prompt #1) Monday through Friday, 9 a.m. to 5 p.m. EDT.

NO recall (Photo 1)



RECALL (Photo 2)



REMEDY/ACTION TO BE TAKEN: STOP USING YOUR RIFLE. Any unintended discharge has the potential to cause **injury or death**. Immediately cease use of recalled rifles and return them to Remington free of charge. Rifles will be inspected, specialty cleaned, tested, and returned as soon as possible, at no cost to you. **DO NOT** attempt to diagnose or repair recalled rifles.

Remington®

TO PARTICIPATE IN THIS RECALL PROGRAM: For your safety, **STOP USING YOUR RIFLE** and immediately contact Remington.

To participate in the recall, please follow the instructions below:

- STEP 1** Visit xmprecall.remington.com or call 1-800-243-9700 (Prompt #3 then Prompt #1) Monday through Friday, 9 a.m. to 5 p.m. EDT. You will be asked to provide your name, address, telephone number, and rifle(s) serial number.
- STEP 2** Upon receipt of the information requested in Step 1, Remington will send you pre-paid shipping tags, boxes and written instructions. Remington will cover all related shipping, inspection, and cleaning charges. Please **ONLY** return your rifle with the designated shipping tags and boxes, as they are marked to expedite the rifle to a dedicated Remington facility.

VERIFICATION OF CORRECTIVE ACTION: Upon return of your rifle, you will note a punch mark on the bolt release (see Photo 3 below). This mark confirms your rifle has been inspected and specialty cleaned under this recall program.

Remington has also corrected the XMP trigger assembly process to eliminate this problem in rifles made after April 9, 2014. Rifles made after April 9, 2014 will also have a punch mark on the bolt release.

Even after your rifle has been inspected and repaired under this recall program, always follow the Ten Commandments of Firearm safety, printed below, whenever you handle any firearm.

The Ten Commandments of Firearms Safety

1. *Always keep the muzzle pointed in a safe direction.*
2. Firearms should be unloaded when not actually in use.
3. Don't rely on your gun's safety.
4. Be sure of your target and what's beyond it.
5. Use proper ammunition.
6. If your gun fails to fire when the trigger is pulled, handle with care.
7. Always wear eye and ear protection when shooting.
8. Be sure the barrel is clear of obstructions before shooting.
9. Don't alter or modify your gun and have it serviced regularly.
10. Learn the mechanical and handling characteristics of the firearm you are using.

Remington®

PHOTO 3



Punch Mark

Remington is deeply sorry for this inconvenience, but we believe in safety first. It is imperative that Model 700 and Model Seven rifles subject to this recall **are not used** until they have been inspected and specialty cleaned by Remington.

The Remington team is committed to the quality and safety of its products.

TRANSCRIPTION OF AUDIO CD ENTITLED:

State OF Mississippi vs Zachary Stringer

Marion County Circuit Court

Cause No. K12-0055H

Charge: Murder

MSCO INTERVIEW

MSCO #2011-11504

MSME #ME11-0643

LEE COTTON: Friday, August the 5th, 2011, at the Marion County Sheriff's office, doing interview with Zachary Stringer. At the interview is myself, Lee Cotton, Investigator with the Marion County Sheriff's office.

JAMIE SINGLEY: Jamie Singley, Investigator with the Sheriff's office.

MR. FORTNER: I'm Tom Fortner. I'm the attorney representing Zachary Stringer.

ZACH STRINGER: And I'm Zack Stringer, the accused.

Q Thank you. Zachary, before we start this interview, I need to read you your Miranda rights. Before we ask you any questions, you must understand your rights. You have the right to remain silent.

EXHIBIT

12

1 Anything you say can be used against you in court. You
2 have the right to talk to a lawyer for advice before we
3 ask you any questions and to have a lawyer with you
4 during questioning. If you cannot afford a lawyer, one
5 will be appointed for you before any questioning if you
6 wish. If you decide to answer questions now without a
7 lawyer present, you still have the right to stop
8 answering at any time. You also have the right to stop
9 answering at any time until you talk to a lawyer.

10 I have read these statements of my rights. I
11 understand what my rights are. I'm willing to make a
12 statement and answer questions. Do you have any
13 problem with that?

14 A Yes. No problem at all.

15 Q If you will, read this part right here.

16 A Uh-huh (indicating yes).

17 Q Out loud.

18 Q Out loud.

19 A I have read this statement of my rights and I
20 understand what my rights are. I'm willing to make a
21 statement and answer questions. I do not want a lawyer
22 at this time. I understand and know what I am doing.
23 No promises or threats have been made to me and no
24 pressure or --

25 Q Coercion?

1 A -- coercion of any kind has been used against
2 me.

3 Q Do you understand?

4 MR. FORTNER: Yeah. Let me -- just for the
5 record, I'm Tom Fortner. Let me make this clear
6 that I'm the attorney representing Zachary
7 Stringer. And I have explained all of Zachary's
8 rights to him. He understands them. He's willing
9 to make this statement. And I'm present with him
10 during the course of this statement. I have
11 advised him to answer questions honestly and
12 truthfully that are asked of him by the detectives
13 today.

14 A Go ahead?

15 Q You can sign that, yes.

16 Q If you will, also initial right here. Put
17 your initials right here.

18 A I'm sorry. I'm kind of shaky. I'm just --

19 Q That's okay.

20 A I'm just real nervous.

21 Q I understand.

22 A There?

23 Q Yeah. Just put your initials right next to
24 that. Thank you. Would you mind witnessing this?

25 Q No. Not at all.

1 Q Sign your name.

2 A In my mind I'm all clear, but my nerves and
3 my body feel shot all to heck.

4 Q Zachary, you live at 638 East Baylis Chapel
5 Road?

6 A Yes, sir. I did.

7 Q Columbia, Mississippi. Do you remember what
8 happened the night of Saturday, June the 11th, 2011?

9 A Yes, sir.

10 Q Okay. In your own words, starting from --
11 what did y'all do that day?

12 A Well, that morning my daddy had let me sleep
13 in.

14 Q Okay. What's your daddy's name?

15 A Roger Dale Stringer. Him and Justin went
16 to -- apparently went to a Jake's thing. And my dad
17 said he taught one of those safety courses and Justin
18 went around and did all the stuff. And let me see.
19 They came home. Daddy dropped Justin off about 12:30,
20 I reckon it was. I'm not sure about that, but -- and
21 then he got me and we went to (inaudible). We went to
22 Ward's, got some hamburgers, went to the beach, had a
23 big time.

24 Q Who was with you?

25 A Just me and my dad.

1 Q Okay.

2 A Justin had an ear infection and he couldn't
3 go. We came back about 4:00 o'clock. He told us to
4 get a bath and get ready, because we were going to eat.
5 Neither one of us got a bath, but we tried to make it
6 look like it.

7 Q Okay.

8 A We got there probably about 6:05, 6:10. We
9 sat in my room a little bit watching a little bit of a
10 movie I had been watching. And we just said crap on it
11 and went, go ahead and eat. We went and eat. We went
12 to Jack's. And we each got a half pound of shrimp.
13 Justin peeled a half pound of shrimp and gave me the
14 other half. Daddy gave me some and we all ate and had
15 a big time.

16 We went to Wal-Mart and I got a pack of
17 watermelon red lizards, because I was out. And Justin
18 got a fishhook discarder thing. You get the fish --
19 the hook out of a fish that's got it real deep in
20 there. We looking at that on the way home. We didn't
21 go anywhere else after that, so.

22 And got home about 8:30, I reckon. Went in
23 -- we went, got out. Daddy didn't go in. We hugged
24 him and told him we loved him. I went in the house.
25 Justin did the same. He didn't follow us in.

1 Q Who was in the house when y'all got home?

2 A It was locked. Daddy had to open the door
3 for us. Mama was off with one of her friends.
4 Apparently, or so mama had told me, Justin called her
5 and she was going to come over and get him or
6 something. I found that out later. From the time me
7 and him talked or started talking, I went in my room
8 immediately, which is my normal habit, either to play
9 video games or watch TV, and just sat there, watching
10 TV.

11 And then Justin went in the living room with
12 his blow gun, I reckon. I don't know how long he was
13 in there, shooting his stuff. But every few minutes I
14 hear flack, that durn little blow gun whopping onto
15 something. And here in a minute, he shot the dog. The
16 dog come in the room. I pulled the dart out the dog
17 and tried to send him back in there without having to
18 get up, but he wouldn't go. He jumped up in the chair
19 with me.

20 Went out, picked the dog up, took the dart
21 with me, took him in there, handed him to Justin, give
22 him the dart. And Justin asked me to come in there and
23 talk with him, shoot the bull. So I said, "Hang on.
24 Let me get us a conversation piece, so we ain't got
25 nothing to talk about." We talk about deer hunting,

1 that buck I killed a couple months back, the one I had
2 been hunting for a couple of months. I went in there,
3 got it. Didn't check the action.

4 Went back and I -- that durn gun, I took it
5 apart -- I know I shouldn't have done it -- a couple of
6 days before, took it apart, loosened everything up and
7 it didn't work as good. The little clip thing wanted
8 to hang up now. I went in there, went to fiddling with
9 it, didn't open the bolt and just didn't mess with it.
10 Fiddling with it, closed it, go put it up after about
11 fifteen minutes. Justin had -- in that time Justin had
12 found my phone and give it to me. Probably found it on
13 the couch. It was dead.

14 Went to go put my rifle up. And I remember
15 getting up and I heard a click. And I had no reaction
16 time between the click and the bang. It was just click
17 and it was immediate. There was no pain. He didn't
18 feel a thing. The gun flew out of my hand, because I
19 wasn't prepared for the recoil, and landed on the
20 floor. And I don't know whether I was screaming or
21 hollering at this time. I was just numb. You know it
22 was there.

23 The veins in the back of his head, it looked
24 like it was under such pressure when it come out, like
25 a bomb blew up in his head. And my first thought was,

1 oh, my God, how am I going to tell mama and daddy.
2 Y'all weren't even a thought. I could take all this.
3 I just couldn't face my mama and daddy with it.

4 Q What happened then, Zach?

5 A So like an idiot, I picked my rifle up. I
6 went in that room and went in my closet and put it up
7 on the immediate right -- left shelf on top of a box,
8 which is not its normal place. I could show you the
9 spot if I was there. Went back out and decided what I
10 was -- I was coming to the "T" in the hall, what I was
11 going to do.

12 It was more reaction than thought, I reckon,
13 because I wasn't thinking at this time. Went in there
14 and got Justin's .20 gauge. I wasn't thinking of
15 ballistics or none of this stuff. I knew -- I didn't
16 know anything right then. Got the shotgun, got a -- I
17 think it was a number six shot shell, stuck it in
18 there. Went outside, went out the back door, didn't
19 aim or nothing, just boom. Closed the back door
20 between his legs. I didn't pay much attention to it.

21 Stood there and I went and called mama, told
22 her the first story I told you. She was hysterical.
23 She said, "Call your daddy." I tried to and it only
24 took him 30 seconds to get the call, but she had
25 already beat me to him. I called him and told him.

1 And he was there within two or three minutes. And I
2 have no recollection of -- I think I just stood there.

3 Q Where were you at when the gun went off?

4 A I was like that. Right -- I was in the
5 process of getting up.

6 Q Getting up off of what?

7 A Yeah. Off the couch.

8 Q Off the couch?

9 A Of the little -- I think it was off the -- I
10 think I was a little bit to the side of the middle.

11 Q You were sitting on the couch?

12 A Closest to Justin.

13 Q And you were getting up when the gun went
14 off?

15 A Yeah.

16 Q Okay. Now, tell me again, what did you do
17 with the rifle?

18 A I went after -- after I went to the shotgun,
19 shot it, I went and I thought -- before -- I thought
20 that rifle is going to lead to something up there in
21 its place where it ain't suppose to be, because it was
22 normally on the rack. It was always on the rack. And
23 if it was anywhere else besides the rack, there was
24 something wrong. I went, stupid, and went and put it
25 where it was, didn't take the shell out of it. I

1 didn't want to touch it any more than I had to, not
2 because of fingerprints, because what it did.

3 And then I waited for my parents to get
4 there. And they were there almost instantly, which I
5 was glad for that. And I went outside and I didn't
6 want daddy to see Justin like that, but he pushed me
7 aside and went in anyhow. And I followed him like a
8 lost dang puppy. And he said his goodbye. We knelt
9 down and prayed, told him we was going to miss him and
10 we loved him. And then we got up.

11 At that point I had already got Fred out of
12 his arms, because he was right there, so Justin
13 wouldn't shoot him with the dart anymore. Justin
14 couldn't get around on him. And mama was there after a
15 little bit. I had -- daddy had -- I had went out on
16 the carport. I was just standing there. Daddy come
17 out of the house again, scooting dogs with his feet,
18 telling me to get the dogs out of there, because they
19 was going to eat some of it up.

20 I got the puppy out. We didn't pay much
21 attention to there -- what they wanted. And I moved --
22 just threw them in the cage, locked them up, so they
23 didn't get in anything.

24 Q Where was the .20 gauge shotgun at when you
25 got --

1 A It was on the rack in his room.

2 Q In his room?

3 A Uh-huh (indicating yes). I think it was
4 either on the rack or it was over there by his bedside.
5 I can't remember that.

6 Q Where was the shell at that you put in?

7 A It was on the little rack. He had a couple
8 of shells on there. I think there's a sack of shells
9 and he's got all kinds of knickknacks and crap and
10 vests hanging off. I just grabbed the shell.

11 Q What kind of rifle was it?

12 A .25 aught six.

13 Q Do you remember what name brand?

14 A Remington Model 700, synthetic stock with a
15 clip hold 35 nine scope on it. And it had a bipod on
16 it, didn't it?

17 Q Bolt action?

18 A Bolt action, yeah. It had a bipod on it. It
19 was fixed. It didn't float.

20 Q What you think about this? That gun went
21 off. Did you at any time pull that bolt back?

22 A Nope.

23 Q To take the round out?

24 A Nope. It went out of my hands.

25 Q When did the round get put in the gun?

1 A The only time I can think, the only time I
2 can think is a couple of nights before. I don't know
3 how many nights before. It could have been five or six
4 or a week or I don't know. Justin come in my room
5 about 11:00 o'clock when -- I think it was about
6 11:00 o'clock. He said, "I heard something outside."
7 And he went in there in his room and he put a shell in
8 the magazine. He didn't put it in the chamber of his
9 .20 gauge. He gave me that single shot .20 gauge
10 that's in my room on the rack, because he thought I was
11 stupid to be trying to use -- or if it was somebody out
12 there trying to get in the house, he thought it was
13 going to be stupid to try to shoot at them with a rifle
14 with a scope on it in pitch black and the reason it
15 dawned on me.

16 But like a dummy, I loaded it anyhow. And I
17 thought I got all the shells out of it. I went -- I
18 had it in my hands. I went out, because he said he saw
19 it go by his room. And I thought they might be around
20 in the front or coming up the carport. Went out there
21 and the floodlights was on, but the carport lights was
22 on also, so it wasn't just the motion lights.

23 And I say they are stupid if they are going
24 to turn the carport lights on. Looked and I heard
25 mama. Oh, I know mama and daddy's talking. And I

1 heard her coming. I went back in my room, because she
2 doesn't like it when we do that. She says -- she
3 didn't like it when we hear a noise and come pouring
4 out like hornets with guns everywhere. We've done that
5 a few times.

6 In fact, we'd hear something outside and I'd
7 come out with a Benelli and he'd come out with his .20
8 gauge and we ~~didn't even look.~~ ^{did it once when we had company.} We got our butts chewed
9 out.

10 Q The night that that happened, how many rounds
11 did you put in that rifle?

12 A I didn't put any bullets in that gun.

13 Q I'm not talking about this one.

14 A Oh, oh, oh, that night. I thought -- I
15 put -- I put the whole clip. I put -- I took the clip
16 out, took the clip out and -- because it was quicker
17 than racking the bolt and this loud. Took the clip
18 out, put the rounds in the long thing. Put it there.
19 Went to sleep. Because I was trying to hurry up, so
20 mama wouldn't catch me.

21 Q When you --

22 A I forgot about it, I reckon.

23 Q The night that this happened, that this
24 occurred, what -- did you fool with the magazine or the
25 rounds at all that night when you went in there and was

1 talking to Justin?

2 A I was messing with the magazine, but the
3 bullets were out of it. I thought the gun was empty.
4 I thought it was -- daddy has trained me gun safety
5 since the day I was old enough to listen. Safety
6 courses. Crazy. I went through safety course, missed
7 one question. And it wasn't even a very relevant
8 question. It was about like some fishing guru or
9 something.

10 All the rifle safety was perfect. I thought
11 I was the last one in the world something like this was
12 going to happen to. I'm safe. I never tried anything
13 unsafe.

14 Q Jamie, you got anything else you need to add?

15 Q I'm good.

16 Q What about you, Mr. Tommy?

17 Q Would you have a problem with giving us a
18 written statement as what you told us today?

19 A I would not have any problem.

20 Q I don't -- it don't count against spelling.
21 Don't worry about the spelling. Just write the best
22 you can. Not going to be in a hurry. At this time it
23 is August the 5th, 2011, 0940 hours. We're going to
24 end this recorded interview at the Marion County
25 Sheriff's office. (END OF AUDIO)

C E R T I F I C A T E

STATE OF MISSISSIPPI

COUNTY OF LAMAR

I, Rhonda B. Wetzel, RPR, CCR, Court
Reporter and Notary Public, duly commissioned for the
County of Lamar, State of Mississippi, do hereby
certify:

That the preceding fourteen (14) typewritten
pages contain a full, true and correct copy of my
transcription of the audio CD attached thereto.

That I am not related to or in anywise
associated with any of the parties to this cause of
action, or their Counsel, and that I am not financially
interested in the same;

IN WITNESS WHEREOF, I have hereunto set my
hand, this the 28th day of January, 2013.


Rhonda B. Wetzel, RPR, CCR, Notary
Public, State of Mississippi,
My commission expires 1-16-2016.



IN THE CIRCUIT COURT OF MARION COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

VERSUS

CAUSE NO. K12-0055H

ZACHARY STRINGER

DEFENDANT

HEARING OF OCTOBER 16, 2012

HEARING OF JANUARY 29, 2013

TRIAL OF FEBRUARY 4 - 7, 2013

SENTENCING OF FEBRUARY 25, 2013

SUSAN L. LINK, RPR, CSR #1228
Official Court Reporter



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1 IN THE CIRCUIT COURT OF MARION COUNTY, MISSISSIPPI

2

3 STATE OF MISSISSIPPI

PLAINTIFF

4

5 VERSUS

CAUSE NO. K12-0055H

6

7 ZACHARY STRINGER

DEFENDANT

8

9 CHARGE: MURDER

10

11

HEARING IN OPEN COURT

October 16, 2012

12

13

14 APPEARANCE:

15

FOR THE STATE:

16

HAL J. KITTRELL, ESQ.
District Attorney
Fifteenth Judicial District

17

18

FOR THE DEFENDANT:

19

THOMAS FORTNER, ESQ.
525 Corinne Street
Hattiesburg, Mississippi 39401

20

21

22

PRENTISS G. HARRELL, CIRCUIT COURT JUDGE

23

JANETTE NOLAN, CIRCUIT CLERK

24

BERKLEY HALL , SHERIFF

25

26

TINA M. BRELAND, CSR, RPR
Official Court Reporter

27

28

29

1 is to determine the manner of death in any autopsy.

2 Could you give us the particular versions, conclusions
3 that a forensic pathologist might reach concerning any
4 particular -- not this particular autopsy, but any
5 autopsy? What are your options as far as the return of
6 the manner of death?

7 A. The general manners of death are classified
8 as -- or the choices would be natural, accident,
9 suicide, homicide, or undetermined.

10 Q. And in this particular case, did you rule out
11 natural?

12 A. Yes.

13 Q. So that left accidental, suicidal, homicidal,
14 or undetermined, correct?

15 A. Correct.

16 Q. And based on the information that you had to
17 work with, what was your opinion as to the manner of
18 death?

19 A. That it could not be determined.

20 Q. I'm handing you what was been marked for
21 identification as an envelope marked for identification
22 as 43. Do you recognize, or at least on the submission
23 form, where that was tendered to the Crime Lab?

24 A. There were fragments of projectile recovered
25 and submitted as evidence. I don't recall this
26 particular envelope, obviously.

27 Q. It was submitted before you got hold of the
28 case?

29 A. Correct.

1 foundation.

2 MR. HORAN: Well, I think the statements
3 of the defendant that we propose to put in
4 later and the photos that have already been
5 introduced will make this particular
6 testimony relevant, Your Honor.

7 THE COURT: I will allow it to continue.
8 I don't want to deal too much, though, in
9 hypotheticals.

10 MR. HORAN: Yes, Your Honor, I
11 understand.

12 THE COURT: Thank you.

13 Q. Getting to the manner of death being
14 accidental versus homicide -- okay?

15 A. Okay.

16 Q. What factors would you need, generally
17 speaking, to make that determination?

18 A. The delineation between accident and homicide
19 with reference to gunshot wounds is -- I think the
20 easiest way for me to phrase it would be this. An
21 accidental death or manner of death with a gunshot
22 wound would entail some evidence that the gun had
23 actually misfired or fired without the willing effort
24 by another person.

25 Q. All right. And if the proof is that the gun
26 cannot be --

27 MR. FORTNER: Now we're going to have to
28 object, Judge. Let us approach the bench
29 and ask the jury to be excused.

1 Q. State your name, please.

2 A. Lori Beall. It's L-O-R-I, B-E-A-L-L.

3 Q. Ms. Beall, where are you employed?

4 A. At the Mississippi Crime Laboratory.

5 Q. In what capacity?

6 A. I'm a forensic scientist specializing in
7 firearms identification.

8 Q. Can you give us the benefit of your
9 educational background?

10 A. Yes.

11 I have a bachelor's degree from the University of
12 Southern Mississippi in criminal justice with a minor
13 in forensic science.

14 Q. Can you give us the benefit of any continuing
15 education outside of USM's undergraduate degree
16 relative to your position?

17 A. Yes. I completed an extensive two-year
18 training program at the Mississippi Crime Laboratory
19 specializing in firearm and tool mark examination and
20 identification.

21 Q. Do you stay abreast of ongoing developments
22 in that field?

23 A. Yes, I do. I'm a member of the Association
24 of Firearm and Tool Mark Examiners, and I'm also
25 certified by that association.

26 Q. Have you ever been qualified in that field of
27 firearms examination as an expert?

28 A. Yes, I have.

29 Q. Have you testified in the circuit courts in

1 Q. And you performed an examination as to that
2 relative to the gun I just showed you. I believe it
3 was Exhibit 37, I believe?

4 A. Yes, I compared it to test fires from the gun
5 in Exhibit 37 and verified that it was fired in that
6 firearm.

7 Q. And with reference to the fragments that were
8 submitted from the Crime Laboratory, the medical
9 examiner's office, do you have the submission on that
10 particular piece of evidence?

11 A. Metal fragments that were submitted were
12 Crime Lab submission 2.

13 Q. And were you able to determine anything
14 concerning them? I believe you testified -- concerning
15 them relative to this particular gun?

16 A. No, sir. They were extensively mutilated,
17 and they had no comparison value.

18 Q. In addition, you said you performed some
19 other tests concerning the .25-06 rifle that you
20 previously identified; is that correct?

21 A. Yes, I did.

22 Q. And what were those tests?

23 A. It was requested that I do a functional
24 reliability test on the firearm to make sure the gun
25 was functional as it was manufactured to be.

26 Q. And did you, in fact, do a functionality test
27 concerning that particular gun?

28 A. Yes, I did.

29 Q. What goes into the testing for functionality

1 of a firearm such is that?

2 A. The firearm is first test fired. We fire
3 four live rounds through the firearm into a water
4 recovery tank. Once it is test fired, then we do a
5 3-foot drop test with the manual safety on, to see if
6 it would discharge accidentally. Also we do a drop
7 test with the safety off, to see if it would discharge
8 accidentally. We also have special mallets that we
9 use. It's a rawhide mallet that we use. We also
10 chamber a live empty, which is just a cartridge that
11 has the projectile removed but the primer is still
12 intact, so we would know that it would go off. We
13 would chamber that live empty, take the rubber mallet,
14 put the safety on. We would hit the bolt in
15 question -- on this firearm it is a bolt action,
16 meaning it has a bolt that actuates the cartridge into
17 the chamber. Once that is actuated into the chamber,
18 if you hit the back of that bolt, the firearm would not
19 discharge accidentally with the safety on or with the
20 safety off.

21 Q. So you performed those tests on this
22 particular rifle, and there was no discharge or
23 accidental discharge relative to this gun, correct?

24 A. No, sir.

25 Q. Did it appear, based on your knowledge, to be
26 in good working order?

27 A. Yes, it was.

28 Q. Did you test, in any form or fashion, the
29 firing mechanism, i.e. the trigger and the poundage it

1 would take to fire that particular trigger, to pull and
2 make that trigger release the firing pin?

3 A. Yes. Part of the examination requires us to
4 do a trigger pull. What this involves is we have
5 National Rifle Association certified weights that we
6 use to verify the trigger pull. What this is, is you
7 have a bar that holds different pounds. The first one
8 that we use starts at 1 pound, and it rests on the
9 cocked trigger. Once the hammer is cocked, then you
10 rest it on the trigger and you add weight until the
11 trigger is released, firing the firearm.

12 Q. And you performed that test on this
13 particular gun; is that correct?

14 A. Yes, I did.

15 Q. And what was the poundage required to release
16 the firing pin?

17 A. Greater than 5 pounds.

18 Q. And in the scale of -- is that within norm
19 with reference to that particular gun?

20 A. According to technical data from this
21 particular firearm, it has an adjustable trigger. But
22 on this particular firearm, it was greater than
23 5 pounds. It can be adjusted up or down, but this one
24 had not been adjusted. It was at five.

25 Q. When you say up or down, what is the least
26 that one could adjust down to, to fire it?

27 A. The technical specs said 3 pounds, but it
28 could be adjusted down too.

29 Q. And this one was over 5 pounds?

1 A. Yes, it was.

2 Q. And, again, is that -- is there no range as
3 far as for safety reasons? Is that in a safe range
4 relative to a firearm in general?

5 A. The manufacturer specifications does not
6 recommend going any lower than 3 pounds.

7 Q. Okay.

8 Ms. Beall, with reference to various types of
9 ammunition that would be fired through that particular
10 gun or that type of gun, what are the different types
11 of projectiles that generally you would see fired
12 through that type of weapon?

13 A. It will be a rifle round, which is harder
14 than handgun ammunition. You could have a jacketed
15 hollow point, which there is a hole in the center of
16 the tip of the projectile. You could also have a
17 jacketed soft point, which has a lead tip on it or
18 sometimes it could have a plastic or nylon ballistic
19 tip. What these type of projectiles do, the hollow
20 point or the soft point, they can expand. The full
21 metal jacket is fully encased in copper, and it has
22 less of a capability of fragmenting upon impact.

23 Q. And the lead core or hollow point, when they
24 strike an object, a solid object such as a skull, what
25 is the reaction to the projectile itself, generally
26 speaking?

27 A. Once it hits the target, or in this case hit
28 the head, it would expand upon impact. And it is meant
29 for stopping power. So it's going to open up and

1 to statements given by this defendant, three different
2 statements. You listen to them, look at them, watch
3 them as they progress and change and get closer and was
4 so typical, so typical, and they get closer and closer
5 to the truth, to the truth of the statements. Justin
6 shot himself accidentally, Number 1. Number 2, Justin
7 shot the dog, I got in there and grabbed my
8 conversation piece, we were going to talk about hunting
9 in June, and I got up, heard a click, and the gun went
10 off. To the third statement with Ricky Dean, which is
11 getting a lot closer, I think: Justin pestered me, to
12 shoot me, and I got in there and accidentally the gun
13 went off. We're getting kind of close, I think,
14 people, to what really happened, in his statement. And
15 y'all can make the logical jump from there to where
16 the -- the inference of what happened. You couple that
17 with what Lori Beall said about the mechanism of this
18 gun. You will have the gun yourself. We will give you
19 some gloves and you can go back there and pull the
20 trigger yourself, if you want to. You tell me
21 logically how that statement jives with the physical
22 findings, the physical findings in this case. And I
23 submit to you that one of two things happened: That
24 this defendant shot his brother intentionally. And I
25 believe that's what happened -- excuse me, I believe
26 that's what the proof will show beyond a reasonable
27 doubt. But at the very minimum, knowing guns like he
28 knows them, and as Lori Beall said, that gun will not
29 shoot unless your finger pushes the safety and pulls

1 the trigger. And if he's sitting on that couch
2 pointing that gun at his brother, if that ain't
3 culpable negligence -- and he pulls the trigger, for
4 whatever reason, if that ain't culpable negligence, I
5 don't know what is. The only question I believe y'all
6 are going to have is, is it culpable negligence or did
7 that last statement really tell us what was going on
8 that night.

9 *THE COURT:* Thank you, Mr. Horan.

10 *Mr. Fortner?*

11 *MR. FORTNER:* Thank you, Judge. I'm
12 going to be up for a minute. Would you ask
13 the jury if any of them need a break?

14 *THE COURT:* Sure.

15 Anybody need to take a quick bathroom
16 break? Water, anything at all? All right.
17 And I'll ask you that again after he
18 concludes.

19

20 CLOSING STATEMENT BY MR. FORTNER:

21 Q. Good morning, ladies and gentlemen.

22 If you remember -- before I start, and if I forget
23 before I go on, thank you for being jurors, thanks for
24 doing this. I know it's not pleasant and not easy.
25 But we all appreciate it. So I want to tell you thank
26 you before I start, because I will forget that later
27 on.

28 I told you at the beginning of this trial that
29 Zachary Stringer was responsible for the death of his