

Delaware Corporation and is authorized to do business in the State of Texas. Service should be made upon its registered agent, CT Corporation System 1999 Bryan Street Suite 900 Dallas, Texas 75201, unless Defendant Remington Arms Company, LLC, waives service pursuant to Rule 4(d), Fed. R. Civ. P.

3. Defendant Sporting Goods Properties, Inc. (hereinafter "SGPI") is a Delaware Corporation and is authorized to do business in the State of Texas. Service should be made upon its registered agent, CT Corporation System 350 North St. Paul Street Suite 2900 Dallas, Texas 75201, unless Defendant Sporting Goods Properties, Inc. waives service pursuant to Rule 4(d), Fed. R. Civ. P.

JURISDICTION AND VENUE

4. This Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. §. 1332 in that Plaintiff is a citizen of either the State of Texas or the State of Georgia and that the Defendants are all corporate citizens of the State of Delaware, and the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

5. Venue is proper within the Northern District because Defendants have sufficient contacts within the district to subject them to personal jurisdiction.

COMMON ALLEGATIONS

6. Defendants Remington and SGPI were, and are now engaged in the business of designing, manufacturing, assembling, distributing and selling firearms, and in this regard did design, manufacture, distribute, sell, and place into the stream of commerce the Remington Model 700 bolt action rifle including the action, fire control system, and

safety, bearing serial no. B6660809 (hereinafter the “Rifle”), knowing and expecting that said rifle would be used by consumers and around members of the general public.

7. Prior to November 30, 1993, E. I. DuPont de Nemours, Inc. (hereinafter “DuPont”) owned 100% of the stock in the company known as Remington Arms Company, Inc. (now SGPI). On or about November 30, 1993, RACI (Remington Arms Acquisition Corporation, Inc.) purchased from DuPont substantially all of the income producing assets of Remington Arms Company, Inc. (now known as SGPI), including the corporate name. The company formerly known as Remington Arms Company, Inc. changed its name to Sporting Goods Properties, Inc., and RACI changed its name to Remington Arms Company, Inc. SGPI retained certain non-income producing assets, some with significant environmental and other liabilities such that its net worth was reduced to a small fraction of its former so that SGPI may not be able to pay reasonable judgments in this and similar litigation.

8. SGPI and/or DuPont expressly and impliedly agreed to assume indemnify Remington (“new” Remington) for liability on older rifles by the terms of the Asset/Sale Purchase Agreement as well as the continuing relationship between Remington, DuPont and SGPI. Consequently, DuPont and/or SGPI are the corporate successors to the product liability claims asserted, now and in the future, against Remington, including this particular lawsuit.

9. Remington first sold the Model 700 rifle in 1962, and has continuously designed, manufactured and sold the Model 700 rifle since 1962 until the present. Until 2006, all such rifles were sold with the “Walker fire control”, without substantial

variation.

10. The Remington Model 700 bolt action rifle contains a dangerously defective Walker fire control system which may fire without a trigger pull upon release of the safety, movement of the bolt, or when jarred or bumped.

11. Within the Walker Fire Control Trigger Assembly there is a component called the “trigger connector.” The trigger connector is not connected to the trigger body, but rather is held in place by tension from a spring and the side plates which create a full enclosed housing. (*See* Illustration 1, below). Upon pulling the trigger, the connector is pushed forward by the upper member of the trigger body, which allows the sear to fall and rifle to fire. (*See* Illustration 2, below).

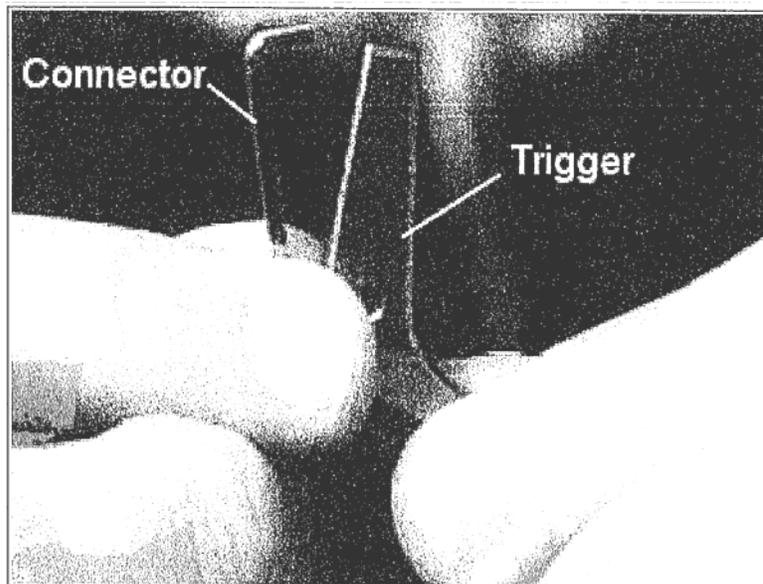


Illustration 1

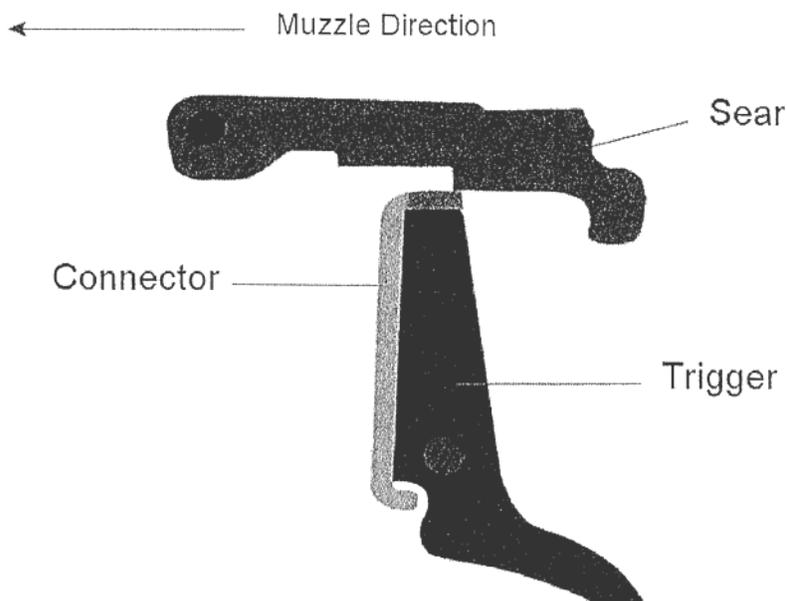
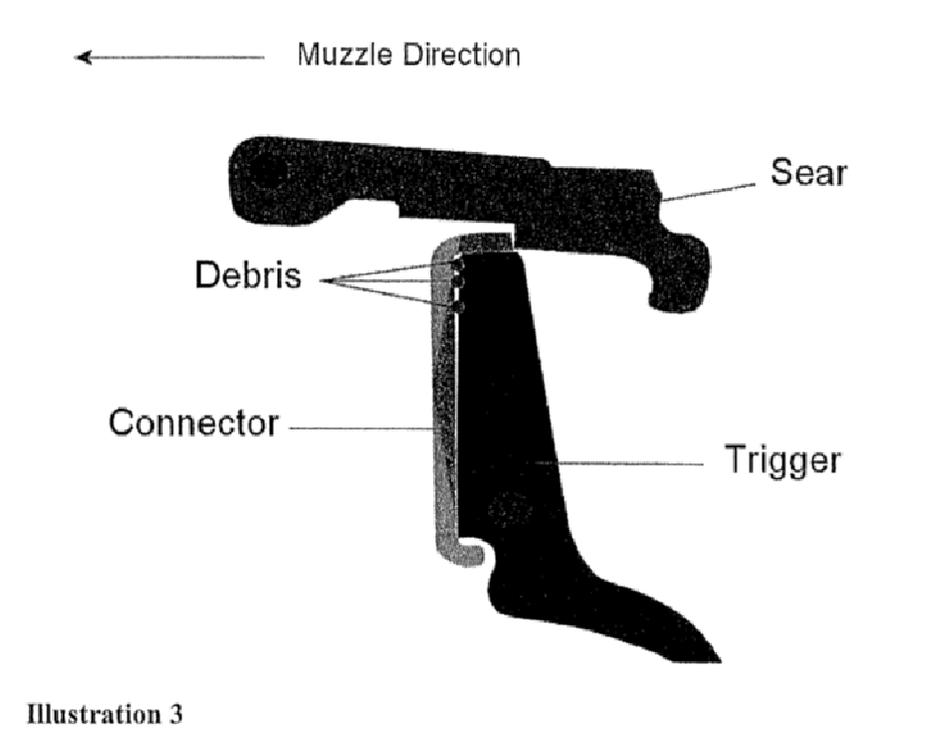


Illustration 2

12. The connector sits under the sear with a specified overlap of as little as 20/1000ths of an inch, which is approximately equal to one-half of the width of a dime or eight human hairs. When a rifle is fired the connector repeatedly separates from the

trigger body, creating a gap between the two parts. Because of the gap created between the trigger body and trigger connector upon firing, field debris, manufacturing scrap, burrs from the manufacturing process, lubrication applied at the factory, other lubrication build up, or moisture can foreseeably become trapped inside the enclosed fire control housing and restrict the return of the trigger connector to proper engagement under the sear, thus predisposing the rifle to malfunction in the absence of a trigger pull. The above described conditions have been further enhanced by various interferences created between other parts that are used to comprise this fire control during their assembly. These conditions have been created as the result of tolerances that Remington has adopted for “ease of manufacture” including loose inspection practices of parts prior to their assembly as a cost saving measure on the party of the company. (*See* Illustration 3, below). Binding created by interference with other parts of the fire control can also interfere with the return of the trigger connector to proper engagement under the sear which will create the same dangerous condition.



13. When the gap between the connector and trigger is large enough, thereby diminishing the engagement (overlap) of the two parts, the connector will no longer reliably support the sear, allowing the rifle to fire without a trigger pull. These unintended firings have been so persistent and common place that Remington has adopted acronyms for the various most common forms of malfunction that Remington itself has observed to occur, i.e., Fire on Bolt Closure “FBC”; Fire on Bolt Opening “FBO”; Fire on Safety Release “FSR”; Jar off “JO”; Fire off Safe “FOS”; and “Fails to Fire.”

14. Remington engineers have testified in product liability litigation throughout the country that materials can lodge between the connector and trigger, resulting in the connector being unable to return to a reliable position to support the sear. Indeed,

Remington undertook several redesign efforts in the 1940s, 1970s, 1980s and 1990s to try to eliminate the functional deficiencies associated with materials becoming lodged between the connector and trigger, or binding of the connector with other parts of the fire control.

15. There is no sound engineering reason to employ a separate connector that is not physically connected to the trigger. This is evidenced by the fact that at no time has any other firearm manufacturer in the world utilized such a device. Many after-market manufacturers have also created replacement triggers that could be used to replace the defective Walker Fire Control system that did not include trigger connectors. Indeed, Mr. Walker himself confirmed in January 2011 that the extra connector served no engineering purpose other than to make operation of the trigger pull smoother for the user, and to reduce the manufacturing cost of the fire control.

16. At all times relevant to this litigation, Defendants expressly warranted in writing that its rifles are built to last a lifetime, have long useful lives extending well beyond 15 years, and that its rifles have a safe life for the consumer, handler and/or user's lifetime.¹

17. In fact, Remington represented, and continues to represent through its online website, that its rifles are built for a "lifetime of use" and a "lifetime of shooting enjoyment."²

18. Plaintiff specifically relied upon such representations, expressions and

¹ See, e.g. Deposition of Edward Barrett, attached as Exhibit A.

² See <http://www.remington.com>; see also 2008 online representations, attached as Exhibit B.

warranties when purchasing the Rifle.

19. Plaintiff purchased the Rifle from Chris Barnes in approximately 1997-1998 from the Barnes Store in Mableton, Georgia.

20. The Rifle was manufactured in 1984 by Remington.

21. Chris Barnes had the Rifle in a Remington Box and Mr. Burdett understood at the time that he had purchased a new rifle.

22. On December 29, 2013, at a ranch in Wichita Falls, Wichita Falls County, Texas, Plaintiff was handling a Remington Model 700 when it suddenly and unexpectedly discharged and shot him.

23. Plaintiff and Steve Weaver were hunting hogs with Plaintiff's friend, J.C. Romines, who is a Texas Game Warden.

24. The men had been hunting for 5-6 hours that day, and at the time of the incident, were sitting in Mr. Romines' pickup truck.

25. Mr. Romines was sitting in the driver's seat, Plaintiff was located in the front passenger seat and Mr. Weaver was sitting directly behind the driver's seat.

26. In keeping with Plaintiff's customary practice, the bolt was left open on the rifle to eliminate any chance of inadvertent firing of the rifle, until he was ready to shoot.

27. Mr. Romines, the Texas Game Warden, states that he does not allow people in his vehicle with firearms unless the bolt is left open.

28. Moments before the incident, Plaintiff's M700 rifle was sitting braced up against the seat of the truck, on his left side, barrel pointed down toward the floor of the truck and with the bolt of the rifle open.

29. The men observed a band of hogs walking up towards the truck, and Plaintiff picked up the rifle by the forestock with his left hand.

30. As Plaintiff moved the rifle, he used his right hand to close the bolt, which contemporaneously caused the rifle to fire. The trigger was not pulled or contacted in any manner, but instead the rifle fired as a result of defects in the Walker fire control system.

31. The bullet from the rifle entered the top of Plaintiff's left foot and exited out the bottom near the big toe pad.

32. This incident caused Plaintiff to require numerous surgeries, and on January 3, 2014, Plaintiff met with a doctor to discuss the pros and cons of reconstructive surgery versus amputation due to the seriousness of the injury and the lack of feeling and blood flow to his foot.

33. Plaintiff underwent extensive reconstructive surgery and treatments in order to salvage his left foot, but due to the significant and irreparable damage caused by the bullet, Plaintiff's use of his left foot, remains, and will continue to be limited.

34. Plaintiff is bringing this action to recover damages from Defendants arising from personal injuries caused by this incident. Plaintiff's damages include past and future medical and related expenses, mental and physical pain and suffering, loss of earnings, impaired earning capacity, permanent disability, disfigurement and other general and special damages in an amount to be determined by the jury at trial of this action.

COUNT I

STRICT LIABILITY

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 34 of the Complaint as though set forth fully herein.

35. The Remington Model 700 bolt action rifle, as designed, manufactured, sold and distributed by Defendant was in a defective condition, unreasonably dangerous to the user, consumer or bystander, their property and the public in general.

36. Edward Burdett used the Rifle in a manner reasonably foreseeable and reasonably suited to the use intended.

37. The Rifle as designed, manufactured, sold and distributed by Defendant was in substantially the same condition, t the time of the incident.

38. The Rifle was defective, unreasonably dangerous and not merchantable when it was sold by Defendant and at the time it left their possession and control.

39. The defective design of the Rifle was a producing cause of Plaintiff's injuries in accordance with Tex. Civ. Prac. & Rem. Code § 82.005.

40. Plaintiff Edward Burdett was injured as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle.

41. A safer alternative design for this Rifle exists in accordance with Tex. Civ. Prac. & Rem. Code § 82.005. In 2006, Remington introduced the "X Mark Pro" trigger as a replacement for the Walker fire control. Even Remington has represented that the X Mark Pro contains "safety enhancements" that would reduce or eliminate the potential for inadvertent and unintended firing of the Model 700.

42. Plaintiff suffered and is entitled to recover damages from Defendants as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle, including:

- a. medical expenses;
- b. pain and suffering;
- c. disfigurement;
- d. loss of enjoyment of life
- e. disability; and
- f. medical care, surgeries, treatment and rehabilitation.

43. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge, malice and gross negligence, exhibiting a willful, reckless, or wanton disregard for the rights, life and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays judgment against the Defendants as follows:

- A. For compensatory, special and general damages in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars (\$75,000);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this court deems just and proper.

COUNT II

STRICT LIABILITY FAILURE TO WARN

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 43 of the Complaint as though set forth at length herein.

44. The Remington Model 700 bolt action rifle was in a defective, unreasonably dangerous and non-merchantable condition because of the failure to warn of its propensity to unexpectedly discharge without pulling the trigger and the failure to properly instruct about its care and maintenance.

45. Plaintiff had no knowledge of such defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the unintended discharge which injured Plaintiff Edward Burdett.

46. Edward Burdett used the Rifle in a manner reasonably foreseeable and reasonably suited to the use intended.

47. A safer alternative design for this Rifle existed and the defective design was a producing cause of the injuries suffered by Plaintiff.

48. As a direct and proximate result of the failure to warn of the rifle's propensity to unexpectedly discharge without pulling the trigger and failure to properly instruct about its care and maintenance, Plaintiff suffered and is entitled to recover damages from Defendants, including:

- a. medical expenses;
- b. pain and suffering;
- c. disfigurement;

- d. loss of enjoyment of life;
- e. disability; and
- f. medical care, surgeries, treatment and rehabilitation.

49. Defendants' conduct in the failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge, malice and gross negligence, exhibiting a willful, reckless, or wanton disregard for the rights and safety for users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against Defendants in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars (\$75,000);
- B. For attorney's fees and costs incurred in this action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT III

NEGLIGENT DESIGN AND MANUFACTURE

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 49 of the Complaint as though set forth at length herein.

50. Defendants negligently designed, manufactured, sold and distributed the Remington Model 700 bolt action rifle in its defective and unreasonably dangerous

condition.

51. Defendants were negligent in one or more of the following respects:
- a. in designing a fire control with a “trigger connector”;
 - b. in designing a fire control with manufacturing tolerance build up;
 - c. in designing a fire control that failed to include preset engagement between the trigger connector and the sear;
 - d. in designing a fire control that was susceptible to interference between the trigger connector and the trigger which compromised or eliminated proper engagement with the sear;
 - e. in designing a fire control that was susceptible to adjustment;
 - f. in designing a fire control that was susceptible to the presence of manufacturing burrs or debris;
 - g. in designing a fire control that will fire without a pull of the trigger;
 - h. in designing a fire control that will fire when the bolt is cycled;
 - i. in manufacturing a fire control that has burrs or manufacturing debris within the fire control;
 - j. in manufacturing a fire control without proper or adequate quality control procedures or checks;
 - k. in failing to warn users and handlers of the rifles of the potential for firings in the absence of a pull of the trigger;
 - l. in failing to warn users and handlers of the risks and hazards of improper maintenance of the rifle;

- m. in failing to warn users and handlers of the risks and hazards of adjustment of the fire control;
- n. in failing to inform or advise users and handlers of the proper procedures for maintenance of the rifle; and
- o. in failing to inform or advise users and handlers of the proper procedures for adjustments to the fire control.

52. As a direct and proximate result of Defendants' negligent design, manufacture, sale and distribution of the rifle, Plaintiff Edward Burdett suffered and is entitled to recover damages from Defendants, including:

- a. medical expenses;
- b. pain and suffering;
- c. disfigurement;
- d. loss of enjoyment of life;
- e. disability; and
- f. medical care, surgeries, treatment and rehabilitation.

53. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge, malice, and gross negligence, exhibiting a willful, reckless, or wanton disregard for the rights and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against the Defendants in a

fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-five Thousand Dollars (\$75,000);

B. For attorney's fees and costs incurred in this action as permitted by law;

C. For interest from the date of the accident as permitted by law; and

D. For such further and additional relief as the Court deems just and proper.

COUNT IV

NEGLIGENT FAILURE TO WARN

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 53 of the Complaint as though set forth at length herein.

54. Defendants negligently failed to warn of the Remington Model 700 bolt action rifle's propensity to discharge unexpectedly without pulling the trigger and failed to properly instruct about its care and maintenance.

55. Plaintiff had no knowledge of such defective conditions present in the Rifle and had no reason to suspect it was unreasonably dangerous prior to the unintended discharge which injured Plaintiff Edward Burdett.

56. As a direct and proximate result of Defendants' negligent failure to warn of the rifle's propensity to unexpectedly discharge and failure to properly instruct about its care and maintenance, Plaintiff suffered and is entitled to recover damages from Defendants, including:

a. medical expenses;

- b. pain and suffering;
- c. disfigurement;
- d. loss of enjoyment of life;
- e. disability; and
- f. medical care, surgeries, treatment and rehabilitation.

57. Defendants' conduct in the design, manufacture, sale and failure to warn of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge, malice and gross negligence, exhibiting a willful, reckless, or wanton disregard for the rights of safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiffs pray for judgment against the Defendants as follows:

- A. For compensatory, special and general damages against Defendants in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars (\$75,000);
- B. For attorney's fees and costs incurred in her action as permitted by law;
- C. For interest from the date of the accident as permitted by law; and
- D. For such further and additional relief as this Court deems just and proper.

COUNT V

DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT

Plaintiff incorporates herein by reference each and every allegation set forth herein in Paragraphs 1 through 57 of the Complaint as though set forth herein.

58. Plaintiff brings this action under the Texas Deceptive Trade Practices-Consumer Protection Act (hereinafter “DTPA”), Tex. Bus. & Com. Code § 17.41 et seq.

59. Plaintiff is an individual who acquired by purchase the subject rifle in trade or commerce. Plaintiff, a resident of Texas, was directly and/or indirectly affected when he suffered injuries as a result of the defective design of the Rifle. Therefore, Plaintiff meets the definition of “consumer” under Tex. Bus. & Com. Code Sec. 17.45(4).

60. The DTPA is to be liberally construed in favor of the consumer according to the plain language of Tex. Bus. & Com. Code Sec. 17.44(a).

61. Defendants are “corporations” and thus meet the definition of “person” in Tex. Bus. & Com. Code Sec. 17.45(3).

62. Defendants engaged in trade or commerce as defined by Tex. Bus. & Com. Code Sec. 17.45(6).

63. The manufacture and distribution of the Model 700 rifle constitutes trade or commerce under the DTPA.

64. Defendants negligently advertised, manufactured and designed its rifles.

65. Defendants negligently failed to remove the rifles from commerce when it determined the rifles were defective.

66. Defendants either intentionally or negligently refused to investigate defects in the rifles.

67. Defendants turned a “blind eye” to the truth in this matter in order to continue to make profits despite the danger that the rifles posed to consumers.

68. Defendants’ acts or practices, including, but not limited to, those listed above, were unfair and/or deceptive and thus violate the DTPA.

69. Defendants committed or engaged in unfair or deceptive acts or practices affecting the conduct of any trade or commerce and constituted unlawful acts or practices in violation of the DTPA.

70. Defendants used deceptive representations in connection with goods or services in violation of Tex. Bus. & Com. Code Sec. 17.46.

71. Defendants violated Tex. Bus. & Com. Code Sec. 17.46(b)(7) by representing that its rifles are of a particular standard, quality, or grade, or are of a particular style or model, to wit: Defendants allege that the rifles are “safe,” that they will not fire absent a pull of the trigger, that only user error or failures of maintenance can dispose the rifles to unintended firing and that the rifles have a safe life lasting the consumer or users lifetime. Clearly, such representations are false.

72. Defendants violated Tex. Bus. & Com. Code Sec. 17.46(b)(9) by advertising its rifles with intent not to sell them as advertised, to wit: Defendant advertises that the rifles are “safe,” that they will not fire absent a pull of the trigger, and that only user error or failure of maintenance can dispose the rifles to unintended firing. Such advertising is false.

73. Defendants violated Tex. Bus. & Com. Code Sec. 17.46(b)(24) by failing to disclose information concerning the rifles at the time of the transaction, and such failure to disclose the information was intended to induce the consumers into a transaction into which the consumers would not have entered had the information been disclosed.

74. Defendants' unfair or deceptive acts or practices were committed knowingly and intentionally, entitling Plaintiff to treble damages for their mental anguish, pursuant to Tex. Bus. & Com. Code Sec. 17.50(b)(1).

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

- A. For economic damages against the Defendants in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars (\$75,000);
- B. For treble damages for Defendants' acts which were committed knowingly and intentionally and caused mental anguish to Plaintiff;
- C. For attorney's fees and costs incurred in this action as permitted by law;
- D. For interest from the date of the accident as permitted by law; and
- E. For such further and additional relief as this Court deems just and proper.

COUNT VI
STRICT LIABILITY PURSUANT TO O.C.G.A § 51-1-11

Plaintiff incorporates herein by reference each and every allegation contained in Paragraphs 1 through 74 of the Complaint as though set forth fully herein, and pleads in the alternative strict product liability pursuant to O.C.G.A. § 51-1-11.

75. The Remington Model 700 bolt action rifle, as designed, manufactured, sold and distributed by Defendants was not merchantable and reasonably suited to the use intended.

76. Plaintiff used the Rifle in a manner reasonably foreseeable.

77. The Rifle as designed, manufactured, sold and distributed by Defendants was in substantially the same condition at the time of the incident.

78. The defective design of the Rifle was a producing cause of Plaintiff's injuries in accordance with O.C.G.A § 51-1-11(b)(1).

79. A safer alternative design for this Rifle exists. In 2006, Remington introduced the "X Mark Pro" trigger as a replacement for the Walker fire control. Even Remington has represented that the X Mark Pro contains "safety enhancements" that would reduce or eliminate the potential for inadvertent and unintended firing of the Model 700.

80. Plaintiff suffered and is entitled to recover damages from Defendants as a direct and proximate result of the defective design, manufacture, sale and distribution of the Rifle, including:

- a. medical expenses;
- b. pain and suffering;
- c. disfigurement;
- d. loss of enjoyment of life
- e. disability; and
- f. medical care, surgeries, treatment and rehabilitation.

81. Defendants' conduct in the design, manufacture, sale and distribution of the Remington Model 700 bolt action rifle was outrageous, done with actual knowledge, malice and gross negligence, exhibiting a willful, reckless, or wanton disregard for the rights, life, property and safety of users and consumers of the rifle and the general public, justifying punitive or exemplary damages.

WHEREFORE, Plaintiff prays judgment against the Defendants as follows:

- E. For compensatory, special and general damages in a fair and reasonable amount as the jury deems just and equitable under the circumstances and commensurate with Plaintiff's losses, in excess of Seventy-Five Thousand Dollars (\$75,000);
- F. For attorney's fees and costs incurred in this action as permitted by law;
- G. For interest from the date of the accident as permitted by law; and
- H. For such further and additional relief as this court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiffs pray that the causes of action alleged herein be tried in this Court before a jury of their peers.

RESPECTFULLY SUBMITTED this 22 day of December, 2015.

BY:

/s/ Timothy W. Monsees

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