

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

CHARLES P. BLEDSOE,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO. 1:09-CV-00069 (WLS)
	:	
vs.	:	
	:	
REMINGTON ARMS CO., INC.,	:	
	:	
Defendant.	:	
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AWARD OF ARBITRATOR

In the above styled case which was brought for non-binding arbitration on October 2, 2009, the undersigned arbitrator having conducted a full hearing of evidence presented by all parties, examined all the evidence submitted, and heard the arguments of the parties, hereby makes the following award:

This matter arose from an incident on December 29, 2006 in which Plaintiff shot himself in the foot with a Remington Model 710 bolt action rifle manufactured by Defendant. As a result of this incident, Plaintiff suffered an injury to his foot that required extensive surgery and rehabilitation and will require future medical care. Further, he was forced to leave the military service of his country as a United States Marine. The parties do not seem to dispute the extent or necessity of medical treatment or the vocational effect of Plaintiff's injury. At the hearing, the principal dispute was over whether the gun manufactured by Defendant was defective and if so, whether Plaintiff was contributorily negligent.

The gun was inspected and tested by experts for both parties. But the condition of the

gun at the time it was tested and inspected several months after Plaintiff's injury was not the same as it was at the time of the incident because out of concern for its safety, Charles P. Bledsoe took the gun to a "reliable gunsmith for a complete check up". The gunsmith selected for this task reported that he found "an excessive amount of sand" in the trigger mechanism.

There was considerable discussion of the gunsmith's credibility. Regardless of whether he has the credentials he claims to have, his credibility is enhanced by his small charge of \$25.00 for the service he provided in disassembling and cleaning the gun.

The finding of the gunsmith is consistent with the history that was presented in painstaking detail in Plaintiff's trial exhibits. Defendant knew that its design allowed dirt to enter the trigger mechanism of the gun and this made it more likely that the gun would go off without a trigger-pull. Even one of the patent holders questioned the safety of the gun. The gunsmith's finding supports my conclusion that the gun more likely than not discharged without its trigger being pulled and supports the testimony of witnesses who said Plaintiff told them his finger was not on the trigger when the gun discharged. Accordingly, I find that the gun was defective in design and manufacturing at the time it left Defendant's control and that the defective condition was a proximate cause of Plaintiff's injury.

As I have acknowledged, Defendant has raised the defenses of contributory negligence and assumption of the risk. After reviewing the documentary evidence and listening to the arguments of counsel, the conclusion that Plaintiff was comparatively negligent is unavoidable. It should be noted that the game warden's report determined the cause of the incident to be "removing firearm from or placing fire arm in vehicle". Further, I find that Plaintiff was negligent in allowing the gun to be pointed at his foot and disengaging the safety mechanism

while attempting to unload it. Although Plaintiff's negligence combined with that of Defendant proximately caused his injury, I find that his conduct did not rise to level that is necessary for him to have assumed the risk.

Having found that Plaintiff was comparatively negligent, it is necessary to determine whether his negligence exceeded that of Defendant. As Georgia is a comparative negligence state, the only way Plaintiff can recover damages is that his negligence is less than Defendant's. In making this determination, I find that Defendant's knowledge of the defect was superior to Plaintiff's and that the sand in the rifle's trigger mechanism made it unreasonably dangerous to persons in Plaintiff's position and bystanders. Further, what happened to Plaintiff is consistent with what happened to several other persons who were injured by this model and I find from a preponderance of the evidence that the gun discharged without Plaintiff pulling the trigger. From the evidence that was presented, I also find that Defendant's negligence was greater than that of Plaintiff and that Plaintiff could not have avoided the consequences of Defendant's negligence after it became apparent or in the exercise of ordinary care should have been discovered. I find that Plaintiff was 49% negligent and Defendant was 51% negligent. Consequently, Plaintiff's damages must be reduced by the amount of his negligence.

Plaintiff seeks punitive damages. As shown by the clear and convincing evidence produced at the hearing, the defect in the gun was well known to Defendant for almost sixty years before Plaintiff was injured and that the cost of fixing the defect was minimal. Despite this knowledge and low cost, Defendant failed to issue a recall or take other remedial measures. I find that Defendant knew from its own test data, the many complaints it received before Plaintiff's injury, and the numerous claims for damages that were filed that the gun was

defective. I also find that Defendant was on notice that its product was defective, and that Defendant's refusal to recall it or warn potential users shows willful misconduct, malice, fraud, wantonness, oppression, and that entire want of care which would raise the presumption of a conscious indifference to consequences that authorizes the imposition of punitive damages.

O. C. G. A. § 51-12-5.1.

This conclusion is also supported by clear and convincing evidence that Defendant failed to do what was technologically possible to make the gun reasonably safe for its intended purpose and eliminate the unreasonable risk of harm to users from a defect that Plaintiff had no way of knowing — despite the fact that he was a United States Marine at the time of his injury. Further, Defendant has placed on the market a new model that is, by the admission of a company official, safer than the one which injured Plaintiff.

Based on the foregoing analysis of the facts and applicable law, I make the following award:

I find that the costs incurred for past and future medical treatment to be \$300,000.00.

Reducing that sum by 49%, I award \$153,000.00 for past and future medical care.

On the question of non-economic damages, I find that Plaintiff's damages are \$500,000.00. Reducing that sum by 49%, I award \$255,000.00 as non-economic damages.

As for exemplary damages, I find that Plaintiff is entitled to the sum of \$1,500,000.00. Reducing that sum by 49%, I award \$765,000.00 as punitive damages.

Plaintiff seeks attorney's fees and costs. As there was no evidence on the value of this item, I find for the Defendant on this issue.

This ~~13th~~ day of October, 2009.



LONZY F. EDWARDS
Arbitrator