

EXHIBIT 5

**JAMES TERTIN
ROBERT LANG V. SIG SAUER**

**October 28, 2022
1-4**

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION
4 - - -
5 ROBERT LANG, : CIVIL ACTION
6 Plaintiff, :
7 :
8 V. :
9 :
10 SIG SAUER, INC., : NO.
11 Defendant. : 1:21-cv-04196-CAP
12 - - -
13 October 28, 2022
14 - - -
15 Oral deposition of JAMES TERTIN, held
16 in the offices of Saltz Mongeluzzi & Bendesky
17 P.C., 1650 Market Street, 52nd Floor,
18 Philadelphia, Pennsylvania 19103, commencing
19 at 2:14 p.m. on the above date, before Teresa
20 M. Beaver, a Federally-Approved Professional
21 Reporter and Notary Public.
22 - - -
23 ESQUIRE DEPOSITION SOLUTIONS
24 1835 Market Street
5th Floor
Philadelphia, Pennsylvania 19103
(215) 988-9191

Page 2

1 A P P E A R A N C E S :
2
3 SALTZ MONGELUZZI & BENDESKY P.C.,
4 BY: DANIEL L. CEISLER, ESQUIRE
5 1650 Market Street
6 52nd Floor
7 Philadelphia, Pennsylvania 19103
8 dceisler@smbb.com
9 Counsel for the Plaintiff
10
11 LITTLETON PARK JOYCE UGHETTA &
12 KELLY LLP
13 BY: KRISTIN E. DENNISON, ESQUIRE
14 201 King of Prussia Road
15 Suite 220
16 Radnor, Pennsylvania 19087
17 Kristen.dennison@littletonpark.com
18 Counsel for the Defendant
19
20 - - -
21
22
23
24

Page 3

1	I N D E X	
2	WITNESS	PAGE
3	JAMES TERTIN	
4	BY MS. DENNISON	5
5	BY MR. CEISLER	44
6	BY MS. DENNISON	47
7		
8	E X H I B I T S	
9	MARKED DESCRIPTION	PAGE
10	Exhibit 1 Expert Report of James Tertin	5
11		
12	Exhibit 2 Transcript of the Deposition of Robert Lang	8
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

Page 4

1	D E P O S I T I O N S U P P O R T I N D E X	
2		
3		
4		
5	Direction to Witness Not to Answer	
6	Page Line Page Line	
7	38 17	
8		
9		
10	Request For Production of Documents	
11	Page Line Page Line	
12	10 21 20 21	
13		
14		
15	Questions Marked	
16	Page Line Page Line	
17	None	
18		
19		
20		
21		
22		
23		
24		



Page 5

1 MS. DENNISON: Let's mark this as
 2 Number 1, your report in the Lang case.
 3 - - -
 4 (Deposition Exhibit 1, Expert
 5 Report of James Tertin, was marked for
 6 identification.)
 7 - - -
 8 JAMES TERTIN, after having been
 9 duly sworn, was examined and testified as
 10 follows:
 11 - - -
 12 EXAMINATION
 13 - - -
 14 BY MS. DENNISON:
 15 Q. Good afternoon, Mr. Tertin.
 16 A. Good afternoon.
 17 Q. We are here again; this time to
 18 discuss the discharge incident involving
 19 officer -- involving Robert Lang and the
 20 report you issued in this case.
 21 Is that your understanding as to
 22 why we're here this afternoon?
 23 A. Yes.
 24 Q. Okay. In front of you I have

Page 6

1 marked as Exhibit 1 a September 29th, 2022
 2 report issued by you to Saltz Mongeluzzi, Re,
 3 Robert Bryan Lang verse Sig Sauer, Inc.
 4 Is this your report authored in
 5 this matter?
 6 A. Yes.
 7 Q. On Page 19 there is a signature.
 8 It looks like a computerized signature, but
 9 does that represent your acknowledgement of
 10 this report?
 11 A. Yes.
 12 Q. All right. Let's start with, I
 13 gave you instructions this morning. I won't
 14 repeat the instructions. We'll do our best
 15 between Mr. Ceisler and I to remind you of the
 16 affirmative yeses or nos.
 17 I'll just go ahead with the
 18 deposition itself.
 19 Was the trigger on Robert Lang's
 20 P320 pistol pulled to cause it to discharge?
 21 A. I didn't see it happen, but I
 22 would say yes.
 23 Q. And that was based on your
 24 evaluation and analysis of this matter?

Page 7

1 A. Yes.
 2 Q. We agreed earlier today that the
 3 P320 pistol cannot discharge without trigger
 4 actuation; correct?
 5 A. Yes, we did.
 6 Q. All right. I don't have a copy
 7 of the Notice of Deposition pulled out for
 8 this case. It's going to be similar to the
 9 one I showed you this morning.
 10 Do you recall seeing a Notice of
 11 Deposition in this matter?
 12 A. Yes.
 13 Q. And that Notice of Deposition had
 14 an identical Exhibit A to it, to the one that
 15 I showed you this morning, asking for copies
 16 of file materials.
 17 Did you bring any file materials
 18 with you today?
 19 A. No.
 20 Q. Okay. Now, we have the report
 21 and did you also inspect this pistol?
 22 A. Yes.
 23 Q. Okay. Now, you have a number of
 24 materials reviewed listed here. They appear

Page 8

1 to be identical to the materials listed in
 2 your report authored in Slatowski.
 3 Could you take a look at, except
 4 for -- except for the Immigration and Custom
 5 Enforcement document production. You reviewed
 6 that in connection with the Slatowski report
 7 and that is not part of your Lang report, but
 8 other than that, would you agree that the
 9 materials listed are the same?
 10 A. Yes.
 11 Q. Did you review the deposition of
 12 Robert Lang?
 13 A. Yes.
 14 Q. And we can mark this as Exhibit
 15 2.
 16 - - -
 17 (Deposition Exhibit 2, Transcript
 18 of the Deposition of Robert Lang, was marked
 19 for identification.)
 20 - - -
 21 BY MS. DENNISON:
 22 Q. Exhibit 2 is a copy of the
 23 deposition transcript of Robert Lang.
 24 When did you review that?

Page 9

1 A. I would guess yesterday. I get
2 so much literature. That's my best
3 recollection.
4 Q. Now, you were retained on behalf
5 of Robert Lang to provide certain opinions in
6 this matter; is that correct?
7 A. Yes.
8 Q. Who retained you?
9 A. SM&B.
10 Q. Saltz Mongeluzzi?
11 A. Yes.
12 Q. When were you retained in the
13 Lang matter?
14 A. Earlier this year.
15 Q. Do you remember if it was the
16 same time as the Slatowski matter or before or
17 after?
18 A. I don't recall that timeline
19 there.
20 Q. Is your hourly rate for the Lang
21 matter 200 an hour?
22 A. Yes.
23 Q. And that applies to all of your
24 work except trial testimony, which is 250 an

Page 10

1 hour; is that correct?
2 A. Yes.
3 Q. How much have you billed for your
4 work in the Lang matter to date?
5 A. That, I don't recall.
6 Q. You've sent invoices to Saltz
7 Mongeluzzi for your work in this matter;
8 correct?
9 A. Yes.
10 Q. Approximately how many invoices
11 have you sent to Saltz Mongeluzzi in the Lang
12 matter?
13 A. Four, I believe.
14 MR. CEISLER: I'll represent to
15 you that these cases are being billed as Sig
16 Sauer cases rather than individual cases.
17 Those four invoices are the same for all the
18 cases.
19 MS. DENNISON: Okay.
20 BY MS. DENNISON:
21 Q. And I will request a copy of the
22 invoices, those four invoices.
23 MR. CEISLER: We're getting them
24 pulled.

Page 11

1 BY MS. DENNISON:
2 Q. Now, when you provide your
3 invoices, do you differentiate the time spent
4 on let's say preparing the Lang report versus
5 the Slatowski report?
6 A. No. It's just straight time,
7 working on the Sig matter.
8 Q. Do you provide a description of
9 the work that you are doing?
10 A. Yes.
11 Q. So, when you prepared the report
12 that's in front of you, that's marked as
13 Exhibit 1 in the Lang case, would your
14 description in this report say prepare report
15 in the Lang matter?
16 A. Yeah, it will be on there.
17 Q. Now, for this case, were you
18 asked to do the same thing in this case as you
19 were asked to do in the Slatowski matter?
20 A. Pardon?
21 Q. Were you asked to do the same
22 thing in this case as in the Slatowski matter?
23 A. Yes.
24 Q. And that was as identified on

Page 12

1 Page 2 of your report?
2 A. Yep.
3 Q. To analyze the adequacy and
4 sufficiency of the safety mechanisms on Robert
5 Lang's P320 X Carry pistol?
6 A. Yes.
7 Q. And this report is 19 pages long.
8 Does this contain all of the opinions that you
9 intend to give in this case?
10 A. Yes.
11 Q. Does this report, along with your
12 50 years of experience in the industry,
13 contain all of the bases for your opinions?
14 A. Yes.
15 Q. Have you done any work since you
16 issued this report besides meeting with
17 Mr. Lang's attorneys yesterday and reviewing
18 some additional material?
19 A. I've continued to research Sig
20 pistols.
21 Q. Since the date of this report?
22 A. Yes.
23 Q. Okay. What kind of research have
24 you done into Sig pistols?

Page 13

1 A. Same thing that's outlined in
2 this report.
3 Q. But you've indicated that you've
4 continued to research since this report. So
5 have you learned anything new since you
6 authored this report?
7 A. No.
8 Q. And when you say research, what
9 does that mean? What specifically have you
10 researched?
11 A. Safety and functionality.
12 Q. And how have you performed that
13 research?
14 A. Same as outlined here. Measured
15 trigger pulls, measured weights.
16 Q. Anything else that you would
17 consider to be research into safety and
18 functionality into the P320 pistol?
19 A. No. I haven't cut any apart
20 lately.
21 Q. All right. Do you currently have
22 any plans to do any additional work before
23 trial, other than what may later be requested
24 by your attorney?

Page 14

1 A. Other than what's requested by
2 the attorney, no.
3 Q. Has anything occurred since you
4 issued your report in this matter on September
5 29th, 2022 that changes or modifies any of
6 your opinions?
7 A. No.
8 Q. When you approached this
9 litigation with P320s, did you start with the
10 assumption that there was something wrong with
11 the P320 or was it a blank slate?
12 A. This one was not a blank slate
13 because I had previous history.
14 Q. Can you explain that?
15 A. I had already worked on the
16 Slatowski gun and looked at some in Florida.
17 So, I knew what the case was about at this
18 point.
19 Q. All right. Did that lead you to
20 approach this case believing that there was
21 something wrong with the P320 pistol that
22 caused Mr. Lang's accident?
23 A. Remained objective.
24 Q. Tell me what you did to

Page 15

1 investigate Mr. Lang's accident.
2 A. Took his gun, analyzed it,
3 inspected it externally for wear, abuse. Any
4 external scratches, marks, disassembled it,
5 pulled the barrel out, measured the head space
6 and checked the function of the disconnecter,
7 checked the function of the firing pin block
8 lever, pulled the fire control unit out of the
9 gun, fully inspected it and then reassembled
10 it, test fired it with no ammo, just for
11 function.
12 Q. Okay. And did you find anything
13 functionally wrong with the gun?
14 A. No.
15 Q. Did you find any evidence of
16 broken or abused parts in the gun?
17 A. No.
18 Q. Now, you've talked about the
19 disconnecter.
20 Do you understand what the
21 disconnecter is in the P320?
22 A. Yes.
23 Q. What is it?
24 A. It resets the sear every time the

Page 16

1 gun is fired, brings it into the upward
2 position so it can, in turn, catch the striker
3 as the slide goes forward.
4 Q. Now, when you take the P320 --
5 when you take the slide off of the P320 and
6 you take the P320 apart, do you have to press
7 the trigger to do that?
8 A. You know, I don't recall.
9 Q. Do you recall whether that's
10 something you have to do with other pistols
11 when you take them apart?
12 A. Normally no.
13 Q. Now, you already indicated you
14 read Mr. Lang's deposition. Did you speak
15 with Mr. Lang directly about the incident?
16 A. No.
17 Q. Did you read any depositions of
18 Mr. Lang's wife or any of the first responders
19 who were at the scene?
20 A. I don't recall that I did.
21 Q. Did you speak or correspond with
22 any of Mr. Lang's doctors regarding the
23 accident, his injuries or his treatment?
24 A. No. No. I'm primarily focused

JAMES TERTIN
ROBERT LANG V. SIG SAUER

October 28, 2022
17-20

Page 17

1 on the gun.
2 Q. Did you speak with Mr. Vigilante,
3 Mr. Hicks or any other experts or consultants
4 retained by Mr. Lang about how the accident
5 occurred?
6 A. No.
7 Q. Did you speak with anyone other
8 than your attorneys -- I'm going to rephrase.
9 Did you speak with anyone else
10 other than Mr. Lang's attorneys about how the
11 accident occurred?
12 A. No.
13 Q. On Page 2 to 3 you list the
14 incident scenario.
15 Where did you obtain the
16 information that you have listed under Section
17 4?
18 A. From Mr. Lang's attorneys.
19 Q. Did you inspect Mr. Lang's
20 holster?
21 A. No. That's outside my scope as
22 well. I'm not a holster forensics guy.
23 Q. Do you have an opinion as to what
24 actuated Mr. Lang's trigger?

Page 18

1 A. I do not have an opinion other
2 than that something actuated the trigger.
3 Q. And do you believe that the
4 trigger was fully actuated to cause Mr. Lang's
5 pistol to discharge?
6 A. I didn't see it. I wasn't there.
7 I read the reports and I can only speculate --
8 Q. However --
9 A. -- as to what really happened. I
10 would assume that it was fully actuated to
11 fire.
12 Q. And that's based on the work that
13 you did in this case; is that correct?
14 A. Correct.
15 Q. And we previously discussed that
16 you did some testing on P320 that you
17 purchased to try to get it to discharge while
18 partially actuated and you were unable do so.
19 Is that correct?
20 A. Yep. Yes.
21 Q. And from that, you were of the
22 opinion that for the P320 to discharge, the
23 trigger must be fully actuated. Is that
24 correct?

Page 19

1 A. Correct.
2 Q. And did you determine in this
3 case whether it was Mr. Lang's finger or a
4 foreign object that fully actuated his
5 trigger?
6 A. No. Again, that's outside my
7 scope. I just looked at the gun.
8 Q. Did you make any determination as
9 to whether whatever actuated Mr. Lang's
10 trigger contacted the trigger squarely on?
11 A. No.
12 Q. And so you will not render an
13 opinion then as to where on the trigger the
14 foreign object or finger pressed it to cause
15 full actuation; correct?
16 A. That's correct.
17 Q. All right. On Page 3, you
18 discuss your inspection of the subject
19 firearm. You indicate that you inspected the
20 P320 X Carry pistol on September 28th, 2022.
21 Is that correct?
22 A. Yes.
23 Q. And the pistol was sent to you to
24 inspect in this instance; is that correct?

Page 20

1 A. Correct.
2 Q. Did you take photographs of your
3 inspection?
4 A. No.
5 Q. Did you take any photographs
6 during your inspection?
7 A. I don't recall.
8 Q. Okay. Did you record your
9 inspection?
10 A. I recorded it on paper, yes.
11 Q. Did you videotape your
12 inspection?
13 A. No.
14 Q. And when you say you recorded
15 your inspection on paper, was that on -- did
16 you take notes?
17 A. Yes.
18 Q. Do you still have a copy of those
19 notes?
20 A. I believe I do.
21 MS. DENNISON: I would request a
22 copy of those notes from his inspection.
23 THE WITNESS: That would be
24 transcribed into a typewritten page rather

Page 21

1 than hand notes.
2 BY MS. DENNISON:
3 Q. Do you dictate the notes as you
4 go?
5 A. No. I write them myself.
6 Q. You hand write them and then you
7 transfer them into a written format. Is that
8 what you're saying?
9 A. Yes.
10 Q. And then what do you do with the
11 handwritten notes?
12 A. Throw them.
13 Q. And then you just keep the typed
14 version saved; correct?
15 A. Correct.
16 Q. How many notes did you take
17 during your inspection of the Lang pistol,
18 whether you can tell me if it's one page of
19 paper, two pages?
20 A. One page.
21 Q. What did you note during the
22 inspection?
23 A. I did my usual, measured the
24 poundage for the free travel, poundage to pull

Page 22

1 the pistol from a set point to fire, the depth
2 of the sear, which would be the sear
3 engagement with the striker and my basic
4 poundage pull. I guess I already said that.
5 Q. You measured a total of six
6 pounds of trigger pull weight required to pull
7 the trigger from rest point to break point?
8 A. Correct. One and a half and four
9 and a half.
10 Q. All right. So, when you say one
11 and a half and four and a half, you've got one
12 and a half pounds of trigger pull weight
13 required to move the trigger from the rest
14 point to the set point which is when the
15 trigger bar first makes contact with the sear.
16 A. The striker makes contact with
17 the sear, yes. Excuse me. You're right.
18 Trigger bar.
19 Q. The trigger pull weight from the
20 set point to the break point you measured as
21 four and a half pounds and that is the time
22 for the -- or the weight required for the
23 pistol to go from that set point to where it
24 discharges; correct?

Page 23

1 A. Yes.
2 Q. You have videos from those
3 measurements; is that correct?
4 A. Yes.
5 Q. Then you note that the slide on
6 this gun would not easily close into full
7 battery?
8 A. Yes.
9 Q. Can you explain that to me?
10 A. The slide on this gun, if you
11 pulled it back, and let it go forward slowly,
12 would not lock up. It had to be slammed shut
13 in a fully-opened position by releasing the
14 slide lock.
15 Q. I may need to take that back a
16 second. It's been a long day already.
17 So, when you pull the slide back,
18 were you trying to guide it back into place or
19 did you pull it back and then let go?
20 A. If you pull it back and let go,
21 it would go into full battery.
22 Q. It would not?
23 A. It would.
24 Q. If you pull it back, it goes into

Page 24

1 full battery?
2 A. Correct.
3 Q. If you pull it back and you
4 slowly tried to bring the slide back to full
5 battery, you had a problem?
6 A. Yes.
7 Q. Okay. And can you explain what
8 it was that would happen?
9 A. The barrel would not lock up into
10 the slide.
11 Q. Even if you pulled it or tried to
12 push it back?
13 A. You had to give it a sharp rap on
14 the back of the slide to get it into full
15 battery.
16 Q. Does that mean anything to you?
17 A. Yes.
18 Q. What does that mean to you?
19 A. It's defective.
20 Q. How so?
21 A. Guns don't normally work that
22 way.
23 Q. Do you have any information as to
24 whether Mr. Lang's gun left the factory that

Page 25

1 way?

2 A. I have no information on that.

3 Q. Have you ever seen that happen

4 with any other guns?

5 A. Yes.

6 Q. Did you ever determine the cause

7 of that occurrence on any other guns?

8 A. Yes.

9 Q. What was the cause or causes that

10 you determined on other guns?

11 A. In 1911, it's a link, usually.

12 This gun doesn't have a link. It simply has a

13 take-down pin that the barrel rocks on so I'm

14 assuming that was it.

15 Q. You're assuming what was it?

16 A. The take-down pin.

17 Q. The take-down pin?

18 A. That's what locks the barrel.

19 Q. Okay. And did you look at the

20 take-down pin on this gun?

21 A. No. That was beyond the scope of

22 what I was hired to do. That was just an

23 observation when I looked at it. So I didn't

24 attempt to repair it or examine it.

Page 26

1 Q. And do you have any opinions as

2 to whether that notation that the gun would

3 not easily close into full battery played any

4 role in Mr. Lang's discharge event?

5 A. That, I don't know.

6 Q. Did you look at that?

7 A. No.

8 Q. Do you plan to offer any opinions

9 in that regard?

10 A. No.

11 Q. Okay. The content of your report

12 in this case is very similar to the content in

13 the Slatowski report; is that correct?

14 A. That's correct.

15 Q. Section -- under your analysis,

16 section a, single action versus double action

17 pistols, is there anything different in this

18 report than in your Slatowski report?

19 A. Not to my knowledge.

20 Q. Under B, the P320 functions as a

21 single action striker fire pistol, is there

22 anything different in Section B than in the

23 Slatowski report?

24 A. Not to my knowledge either.

Page 27

1 Q. If you go to Section C of the

2 Lang report, is there anything different in

3 Section C in the Lang report than in the

4 Slatowski report?

5 A. No, not to my knowledge.

6 Q. If we go to Section D, design

7 defect of the internal safety. Is there

8 anything different in this section of your

9 report than in the Slatowski report?

10 A. No.

11 Q. Okay. Section E, type of manual

12 safeties. Is there anything different in this

13 section of your report than in the Slatowski

14 report?

15 A. No, not to my knowledge.

16 Q. I think there is one difference.

17 I'm not trying to trip you up. I want to make

18 sure we have it noted.

19 On Page 15 of the Slatowski

20 report, you have noted that I have also

21 reviewed a document from ICE stating that the

22 number of unintended discharges increased

23 dramatically after ICE approved the P320 use.

24 I don't think you have that in

Page 28

1 the Lang report. Am I correct about that?

2 A. I believe you're correct.

3 Q. So, that would be one difference.

4 Then warnings, is there anything

5 different in your lack of warnings section

6 between the Slatowski report and the Lang

7 report?

8 A. No.

9 Q. G is the Glock striker fired

10 system. Is there anything different in the

11 Lang report from the Slatowski report?

12 Section G?

13 A. No.

14 Q. There is one, 17, you just add

15 where you say in the Lang report, For those

16 reasons, a Glock is far safer striker-fire

17 pistol than the P320.

18 You've added in the ICE document

19 into 17 on the Slatowski document.

20 Then you have in your conclusions

21 in your report, you have 18 conclusions in

22 Slatowski and 17 conclusions in Lang.

23 Can we agree that the first 17

24 conclusions are identical between the two a

Page 29

1 reports other than the substitution of
 2 Mr. Lang's name from Mr. Slatowski's name?
 3 A. Other than his name in Number 12,
 4 yes.
 5 Q. Would it be fair to say that the
 6 reports in the two cases, Slatowski and Lang
 7 are identical, except for the incident
 8 scenarios and the addition of -- sorry, the
 9 incident scenario, the inspection of the
 10 subject firearm and any discussion of that ICE
 11 document?
 12 A. Yes.
 13 Q. Would it be fair to say that the
 14 discussion that we went through with the
 15 Slatowski report on all of your opinions would
 16 be the same as those in the Lang report?
 17 A. Yes.
 18 Q. Now, when you read Mr. Lang's
 19 report, did you review the portion of his
 20 report when he indicated that he did not want
 21 a manual safety, an external manual thumb on
 22 his P320?
 23 A. I did.
 24 Q. Did you also review his testimony

Page 30

1 that when he had a manual safety on his Smith
 2 & Wesson M&P, he typically left the manual
 3 safety off?
 4 A. Yes. Have you ever looked at one
 5 of those safeties?
 6 Q. I have. But my question is --
 7 A. Okay.
 8 Q. My question is simply he left it
 9 off of the M&P; is that correct?
 10 A. Yes.
 11 Q. And he indicated that he did not
 12 see that thumb safety as necessary on the M&P.
 13 Do you recall that?
 14 A. I don't recall that.
 15 Q. That would be Page 75 and 76 of
 16 his deposition.
 17 Do you want to take a look?
 18 MR. CEISLER: Let's take a look.
 19 BY MS. DENNISON:
 20 Q. Specifically, that line is Line
 21 11 and 12 on Page 76.
 22 A. I got it. What was your question
 23 again?
 24 Q. I was just noting or asking you

Page 31

1 if you saw that Mr. Lang testified that he
 2 left off his manual safety on his M&P because
 3 he didn't see it as necessary?
 4 A. Yes.
 5 Q. You agree that at the time that
 6 Mr. Lang's P320 X Carry pistol discharged, he
 7 was attempting to remove it in the holster
 8 from the belt?
 9 A. Yes.
 10 Q. Do you have any information as to
 11 whether any portion of the pistol had been
 12 removed from the holster at the time that the
 13 gun discharged?
 14 A. No, I don't.
 15 Q. You did not review or inspect the
 16 holster to see if any damage to the holster
 17 that might give you any indication as to where
 18 the pistol was seated in the holster at the
 19 time of discharge?
 20 A. No. That's outside my scope.
 21 Q. Mr. Lang testified he did not
 22 touch the trigger, nor could he have done so
 23 while it was in his holster.
 24 Are you rendering any opinions as

Page 32

1 to whether Mr. Lang's finger did or did not
 2 touch the trigger?
 3 A. No. The only opinion I would
 4 render is that if it had had some sort of
 5 manual safety, that accident would not have
 6 happened.
 7 Q. Well, let's break that down.
 8 If it had a manual safety, a
 9 thumb safety, can we agree that if we take
 10 Mr. Lang's deposition testimony on Pages 75
 11 and 76 as true, he would typically have left
 12 the manual safety turned off on the P320?
 13 MR. CEISLER: Objection.
 14 THE WITNESS: I can't agree to
 15 that. I would have left it off on a Smith &
 16 Wesson, also.
 17 BY MS. DENNISON:
 18 Q. Okay. Well, have you spoken with
 19 Mr. Lang?
 20 A. No.
 21 Q. And you agree that he talked
 22 about the fact that a manual safety, he
 23 believed it slowed him down and that he would
 24 typically leave it off?

Page 33

1 A. Yes.

2 Q. And that he did not want a thumb

3 safety on the P320?

4 A. Yes.

5 Q. And as we sit here right now, you

6 can't say one way or the other whether

7 Mr. Lang would have engaged a manual safety if

8 it had one on his P320?

9 A. No.

10 Q. And if he did not have a manual

11 safety engaged on his P320, even if it would

12 have been equipped with one, this accident

13 still would have occurred. Is that right?

14 A. Well, don't forget, my definition

15 of a bladed trigger is also a manual safety.

16 Q. Do you agree that the P320 should

17 have been equipped with a manual safety and

18 bladed trigger?

19 A. I would say that this accident

20 would have been highly improbable.

21 Q. If it was equipped with both?

22 A. Both or either.

23 Q. If it was equipped with just the

24 manual safety and Mr. -- if it was equipped

Page 34

1 with just a thumb safety and Mr. Lang left it

2 off like he did with his Smith & Wesson, we

3 can agree that this accident still would have

4 happened; correct?

5 A. Yes.

6 Q. And we can agree, I believe, that

7 if this P320 was equipped with a bladed

8 trigger, and Mr. Lang's finger or some other

9 object got squarely on that trigger and pulled

10 it, this accident still would have happened?

11 A. I can agree that under that super

12 improbable circumstance, yes.

13 Q. Okay. What basis do you have to

14 say that that is a super improbable

15 circumstance?

16 A. He's pulling the gun up.

17 Q. Okay.

18 A. For a bladed trigger to be

19 disengaged, it needs to be pushed in. He's

20 pulling it the opposite direction.

21 Q. And you've never heard of a

22 situation where somebody is pulling a trigger

23 or a gun out of the holster that that index

24 finger curls in and up on the trigger itself?

Page 35

1 A. No, I have not.

2 Q. Okay. Do you also agree that if

3 somebody is pulling a trigger up and out, that

4 if something is caught in that trigger, as he

5 pulls it up and out, right around that

6 trigger, right around squarely on that

7 trigger, do you disagree that that would cause

8 it to discharge?

9 A. Again, he's pulling it the wrong

10 direction.

11 If something were caught on that

12 trigger, for a trigger to fire, it has to be

13 pulled in toward the grip. If something was

14 caught on that trigger, he's pulling it the

15 opposite direction. So, no, I wouldn't agree

16 to that.

17 Q. We can agree -- that's your

18 opinion that it's improbable. But we can

19 agree that if his finger or another object got

20 squarely on the trigger and depressed it, that

21 this accident would have occurred even with

22 the tabbed or bladed trigger?

23 A. Highly improbable, yes.

24 Q. We've already discussed that the

Page 36

1 Glock, which has that tabbed trigger, that you

2 have not investigated other accidents or

3 unintended discharges with that pistol;

4 correct?

5 A. No, I haven't.

6 Q. Have you investigated unintended

7 discharges with Smith & Wesson's trigger?

8 A. No.

9 Q. Have you investigated accidental

10 discharges with any manufacturer's bladed or

11 tabbed trigger?

12 A. No.

13 Q. Your opinion that it's highly

14 improbable that this gun could be accidentally

15 discharged if it had a tabbed or bladed

16 trigger is based solely on your understanding

17 of how a bladed trigger works. Is that

18 correct?

19 A. And normal physics, yes.

20 Q. Okay. When you say normal

21 physics, you're talking about the direction of

22 movement in Mr. Lang's case in particular;

23 correct?

24 A. And the requirement to be square

Page 37

1 on that blade in order to deactivate it.
2 Q. Have you ever done any testing as
3 to where exactly a finger or an object needs
4 to be on that bladed trigger to cause it to
5 discharge?
6 A. No.
7 Q. Do you have any opinion of
8 whether it's possible for somebody to
9 misperceive an accident when they -- let me
10 ask that again.
11 Do you have any opinion or
12 understanding as to whether it's possible for
13 somebody to misperceive how an incident such
14 as getting shot with an accidental discharge
15 occurred?
16 MR. CEISLER: Objection. You can
17 answer.
18 THE WITNESS: I don't -- say that
19 again, please.
20 BY MS. DENNISON:
21 Q. Sure. Do you have any opinion as
22 to whether an individual may misperceive how
23 an incident such as an accidental discharge
24 when they've been shot has occurred?

Page 38

1 MR. CEISLER: Can I just please
2 ask you to confirm, do you mean expert opinion
3 or personal opinion?
4 MS. DENNISON: I can confirm
5 that. Personal opinion.
6 THE WITNESS: I don't think a
7 person would misconceive the fact that he's
8 been shot, he or she has been shot.
9 However in that moment of trauma,
10 they are going to misperceive details that
11 happened immediately thereafter.
12 BY MS. DENNISON:
13 Q. What about the specific details
14 of how the trigger or -- I'm sorry. What
15 about the specific details of how the gun
16 discharged?
17 MR. CEISLER: I actually am going
18 to object and instruct not to answer. It's
19 just so, so far outside anything we're putting
20 him up for in terms of recollection of events
21 and memories.
22 MS. DENNISON: Okay.
23 BY MS. DENNISON:
24 Q. Now, when Mr. Lang purchased his

Page 39

1 P320 pistol, you'd agree with me that he had
2 options to purchase a P320 pistol that had a
3 manual safety; correct?
4 A. Yes.
5 Q. And he chose not to purchase one
6 of those; correct?
7 A. Yes.
8 Q. And Mr. Lang could have purchased
9 any model of pistol that had a manual safety
10 if he chose to do so; correct?
11 A. Yes.
12 Q. And Mr. Lang testified that he
13 did not want to purchase a pistol with a
14 manual safety; is that correct?
15 A. Yes. And wasn't that based on
16 his experience?
17 Q. Well --
18 A. His previous experience?
19 Q. Regardless of whether it was
20 based on his previous experience or not, my
21 question is just he chose not to. He did not
22 want to purchase a pistol with manual safety;
23 correct?
24 A. Yes.

Page 40

1 Q. Have you ever looked into how
2 frequently users experience an unintended
3 discharge when pulling a pistol out of a
4 holster?
5 A. No.
6 Q. Do you think that would be useful
7 information to understand when testifying that
8 it is highly improbable that a user would
9 accidentally pull the trigger while pulling a
10 pistol out of a holster?
11 A. Do I think that data --
12 Q. Yes.
13 A. -- would be useful?
14 Q. Yes.
15 A. Possibly, however, how would you
16 get that data?
17 Q. Well, I'm not the one who's been
18 in the firearms industry for 50 years.
19 A. That's my point. That's
20 unavailable.
21 Q. Well, for instance, I mean you
22 could speak with people about it. I've spoken
23 with police officers who talk about that
24 happening quite frequently. I don't have the

JAMES TERTIN
ROBERT LANG V. SIG SAUER

October 28, 2022
41-44

Page 41

1 specific data, but is that something that you
 2 would like to have looked into or researched
 3 before stating that it is highly improbable
 4 that a user would accidentally pull the
 5 trigger while pulling a holster --
 6 A. No.
 7 Q. -- a pistol out of the holster?
 8 A. No. My opinions are purely based
 9 on examining these firearms, specifically
 10 Mr. Lang's.
 11 Q. And there are published studies,
 12 I believe, that are out there that could be
 13 found that talk about the high instances of
 14 unintended accidental discharges while either
 15 drawing a pistol out of a holster or putting a
 16 pistol back in a holster, but you have not
 17 looked to see what's out there on that;
 18 correct?
 19 A. I'm not hired to do that.
 20 Q. Okay.
 21 A. I would disagree. I bet you
 22 can't find that information.
 23 Q. I challenge you to go look for
 24 it.

Page 42

1 Did you review any of Mr. Lang's
 2 medical records?
 3 A. Only what was written in his
 4 deposition and report. None of his actual
 5 medical records.
 6 Q. And when you talk about his
 7 deposition and in his report, are you
 8 referencing what he would have testified to?
 9 A. Yes.
 10 Q. And what we've marked as Exhibit
 11 2?
 12 A. Yes.
 13 Q. You don't intend to give any
 14 opinions in this case on his injury, his
 15 recovery or his damages; correct?
 16 A. No. Outside my scope.
 17 Q. Did you review any photographs in
 18 this case of either Mr. Lang, his injuries or
 19 his P320 pistol?
 20 A. No.
 21 Q. Are there any articles or
 22 publications that you relied on in forming
 23 your opinions in this case beyond what is
 24 listed in your report?

Page 43

1 A. No.
 2 Q. Did plaintiff's counsel provide
 3 you with any facts or data that you considered
 4 in forming your opinions outside of what is
 5 set forth in your report?
 6 A. No.
 7 Q. Did plaintiff's counsel provide
 8 you with any assumptions that you relied upon
 9 in forming your opinions?
 10 A. No.
 11 Q. Are you rendering any opinions
 12 about the design of the P320 other than that
 13 you believe it should include a manual thumb
 14 safety or a tabbed or bladed trigger?
 15 A. No. Those two I believe, but no.
 16 Q. Do you have any opinions on the
 17 fire control unit itself that you intend to
 18 render at the time of trial?
 19 A. I have opinions on that, but
 20 that's beyond anything that we've discussed.
 21 Q. And whether it's beyond anything
 22 that we've discussed, what I mean is do you
 23 plan on rendering any opinions on fire control
 24 unit at trial?

Page 44

1 A. If they ask me about it, I will.
 2 Q. Okay. But it's certainly not
 3 something that you have included in your
 4 report; correct?
 5 A. No, it's not.
 6 MS. DENNISON: I don't have any
 7 other questions for you on this one.
 8 MR. CEISLER: Okay. I have one
 9 or two.
 10 MS. DENNISON: Which means ten if
 11 we go by the last time.
 12 - - -
 13 EXAMINATION
 14 - - -
 15 BY MR. CEISLER:
 16 Q. You were asked if you measure
 17 wear on a bladed trigger, you had to press to
 18 make the firearm discharge and you said you
 19 hadn't tested it.
 20 A. I hadn't tested it.
 21 Q. And I just wanted to confirm, in
 22 fact this may even be a question for Kristin
 23 to allow to you clarify.
 24 Did you mean on the trigger

Page 45

1 itself or on the blade? Because a bladed
2 trigger has components that don't have a blade
3 on them.
4 A. I interpreted that question to
5 mean the blade.
6 MR. CEISLER: Is that what you
7 meant by that?
8 MS. DENNISON: Yeah. The blade
9 on the trigger.
10 THE WITNESS: Yes.
11 MR. CEISLER: Then that's not a
12 question.
13 MS. DENNISON: We knew what we
14 were talking about.
15 MR. CEISLER: I just want to make
16 sure the record is clear on that.
17 MS. DENNISON: The record might
18 not have but we knew what we were talking
19 about.
20 BY MR. CEISLER:
21 Q. Just another thing in clearing up
22 the record.
23 We talked about Smith & Wesson
24 manual safety versus a P320 manual safety.

Page 46

1 A. Yeah.
2 Q. Have you seen the M17 manual
3 safety?
4 A. Yes.
5 Q. What are your opinions -- what
6 are your thoughts on the M17's manual safety,
7 the thumb safety?
8 A. Well, two, it's ambidextrous
9 which is handy for a left or right-handed
10 person and number two, it's functional. It's
11 easy to get at and put on and off.
12 Q. How does it compare to a Smith &
13 Wesson M&P manual safety?
14 A. Light years' difference.
15 Q. What are the differences?
16 A. M&P is very small, a piece of
17 stamped metal and it's hidden within the grip.
18 Q. When was the last time you tested
19 a Smith & Wesson M&P manual safety?
20 A. This morning.
21 Q. Is it possible someone might be
22 inclined to use an M17 manual safety but not a
23 Smith & Wesson manual safety?
24 MS. DENNISON: Objection to form.

Page 47

1 THE WITNESS: Yes.
2 BY MR. CEISLER:
3 Q. Why would that be?
4 MS. DENNISON: Objection to form.
5 THE WITNESS: Because it's
6 functional and you can actually reach it
7 physically see the on and off.
8 MR. CEISLER: That is it. That
9 was more than two.
10 MS. DENNISON: I knew better.
11 - - -
12 EXAMINATION
13 - - -
14 BY MS. DENNISON:
15 Q. So, I have to ask, Mr. Tertin,
16 you tested the safety on a Smith & Wesson this
17 morning?
18 A. Yes.
19 Q. Okay. When this morning?
20 A. I would guess about 9:00.
21 Q. Where were you?
22 A. 8:30 or 9:00.
23 Q. Where were you when you tested
24 it?

Page 48

1 A. Here.
2 Q. Which --
3 A. Having said that, I've looked at
4 these guns since they came out, but the last
5 time I saw one was here.
6 Q. And why were you looking at that
7 manual safety this morning?
8 A. To compare it.
9 Q. To what?
10 A. To an M17.
11 Q. And so you were looking at the
12 Smith & Wesson manual safety to compare the
13 ease of use with the M17 manual safety?
14 A. Correct.
15 MS. DENNISON: I don't have any
16 other questions. Thank you.
17 MR. CEISLER: Thank you.
18 - - -
19 (Whereupon, the deposition
20 concluded at 3:04 p.m.)
21 - - -
22
23
24

JAMES TERTIN
ROBERT LANG V. SIG SAUER

October 28, 2022
49-52

Page 49

C E R T I F I C A T E

I hereby certify that the proceedings and evidence noted are contained fully and accurately in the notes taken by me on the deposition of the above matter, and that this is a correct transcript of the same.

Teresa M. Beaver

Teresa M. Beaver

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying shorthand reporter.)

Page 51

Reference No.: 8765276
Case: ROBERT LANG V. SIG SAUER

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

James Tertin

Page 50

Reference No.: 8765276
Case: ROBERT LANG V. SIG SAUER

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

James Tertin

NOTARIZATION OF CHANGES
(If Required)

Subscribed and sworn to on the _____ day of _____, 20____ before me,

(Notary Sign) _____

(Print Name) _____ Notary Public,

in and for the State of _____

Page 52

Reference No.: 8765276
Case: ROBERT LANG V. SIG SAUER

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

Page No. _____ Line No. _____ Change to: _____

Reason for change: _____

SIGNATURE: _____ DATE: _____

James Tertin

