

What Triggers The Right To A Protective Order?

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What are protective orders? Should one be entered in your case?

Many times in divorce cases, protective orders may be entered by a court to seal information from view by outsiders. But these orders are to be entered based on good cause, not just because one party or the other does not want some piece of information revealed. In child custody cases, reports of psychological experts are routinely sealed to protect the best interests of children, even to the extent that parents might only be allowed to read them but not have copies in their possession. In other matters in a divorce, while litigants may ask that their divorce papers be sealed because of their fame or wealth, a protective order is rarely granted as a result of such requests in New Jersey.

In civil litigation, protective orders can and have been misused to keep dangerous information from the public. Recently, in a case involving the Remington 700 Bolt rifle, a judge refused to grant a protective order for a certain aspect of the case, stating that protective orders are not meant to shield or conceal dangers from the public.

The Model 700 rifle, the top-selling product at the Remington Arms Co., is a very successful product for Remington, but there have been many lawsuits about the guns going off without the trigger being pulled.

Over many years, Remington has legally used court secrecy provisions—protective orders—to limit the spread of information about the alleged trigger defect.

Recently, documents and other materials dating back more than 70 years have come to light. These documents reveal that Remington knew of the firing defect but did nothing to change and correct the defect, and insisted that the rifle was safe and that the user was at fault. (See the documentary [here](#)).

The materials have been hidden from the public by protective orders that Remington has insisted upon as a condition of settling lawsuits. If Remington saw that information regarding the faulty trigger mechanism was close to being revealed, it settled the case. Lawyers would agree to enter into protective orders so that they would get better settlements for their clients. Meanwhile, the defect was never revealed or fixed.

In public statements, Remington has maintained that the guns are safe and free of defects. In 2014, while still maintaining the guns are safe, Remington agreed in a nationwide class action settlement to replace the triggers in some 7 million guns.

Protective orders are routinely used to protect a company from having to reveal trade secrets, such as the formula for Coke, for example. But in this instance, and surely in others, the company used the protective orders to hide the risks from the public. This hiding of risks through the use of protective orders has also occurred in the Takata airbag cases and the GM exploding ignition cases.

As I have written in previous blogs, New Jersey courts are at the forefront of pushing to eliminate excessive secrecy in court proceedings. Courts, however, should be secretive and protective of sensitive personal information, such as psychological assessments of parents and children, so that this type of information is not released to the public. The public is not being harmed by protective orders being entered on psychological reports in custody cases, but it is being harmed through the use of protective orders that keep the risks of dangerously defective products in the shadows.