

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

CHARLES A. SMITH, SR.,
Plaintiff

v.

Civil Action No. _____

D. C. 1980, INC.;

D. C. 1980, INC., f/k/a
CONNECTICUT VALLEY ARMS, INC.

Serve: Virginia Office of the Secretary of the Commonwealth
Service of Process Department
P O Box 2452
Richmond, Virginia 23218-2452

Dudley McGarity, Registered Agent
5988 Peachtree Corners East
Norcross, Georgia 30071

BLACKPOWDER PRODUCTS, INC.

Serve: Virginia Office of the Secretary of the Commonwealth
Service of Process Department
P O Box 2452
Richmond, Virginia 23218-2452

Dudley McGarity, Registered Agent
5988 Peachtree Corners East
Norcross, Georgia 30071

CONNECTICUT VALLEY ARMS, INC.

Serve: Virginia Office of the Secretary of the Commonwealth
Service of Process Department
P O Box 2452
Richmond, Virginia 23218-2452

Dudley McGarity, Registered Agent
5988 Peachtree Corners East
Norcross, Georgia 30071

AND

DIKAR S. COOP. LTDA.

*Serve: Virginia Office of the Secretary of the Commonwealth
Service of Process Department
P O Box 2452
Richmond, Virginia 23218-2452*

*Urarte Kalea 26
20570 Bergara, Gipuzkoa
Spain,*

DEFENDANTS.

COMPLAINT

COUNT I

The Parties

Comes now the Plaintiff, Charles A. Smith, Sr., by counsel, and states the following in support of his Complaint against the defendants:

1. The Plaintiff, Charles A. Smith, Sr., is a citizen and resident of the Commonwealth of Virginia. His address is P O Box 416, Max Meadows, Virginia 24360.
2. The Defendant, D.C. 1980, Inc., is a foreign corporation, incorporated in the State of Georgia, with its principal place of business being at 5988 Peachtree Corners East, Norcross, Georgia 30071. This Defendant has designated as its agent for service of process in the State of Georgia, Dudley McGarity, whose address is 5988 Peachtree Corners East, Norcross, Georgia 30071.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Virginia, but was not authorized to do so and has continuously failed to appoint an agent within this Commonwealth for service of process. Jurisdiction over this Defendant is established pursuant to the 1950 Code of Virginia, as amended, § 8.01-

328.1(A)(3)-(5). Therefore, in accordance with the referenced statute, the Secretary of the Commonwealth is the statutory agent for service of process on this Defendant.

3. The Defendant, D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc., is a foreign corporation, incorporated in the State of Georgia, with its principal place of business being at 5988 Peachtree Corners East, Norcross, Georgia 30071. This Defendant has designated as its agent for service of process in the State of Georgia, Dudley McGarity, whose address is 5988 Peachtree Corners East, Norcross, Georgia 30071.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Virginia, but was not authorized to do so and has continuously failed to appoint an agent within this Commonwealth for service of process. Jurisdiction over this Defendant is established pursuant to the 1950 Code of Virginia, as amended, § 8.01-328.1(A)(3)-(5). Therefore, in accordance with the referenced statute, the Secretary of the Commonwealth is the statutory agent for service of process on this Defendant.

4. The Defendant, Blackpowder Products, Inc., is a foreign corporation, incorporated in the State of Georgia, with its principal place of business being at 5988 Peachtree Corners East, Norcross, Georgia 30071. This Defendant has designated as its agent for service of process in the State of Georgia, Dudley McGarity, whose address is 5988 Peachtree Corners East, Norcross, Georgia 30071.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Virginia, but was not authorized to do so and has continuously failed to appoint an agent within this Commonwealth for service of process. Jurisdiction over this Defendant is established pursuant to the 1950 Code of Virginia, as amended, § 8.01-

328.1(A)(3)-(5). Therefore, in accordance with the referenced statute, the Secretary of the Commonwealth is the statutory agent for service of process on this Defendant.

5. The Defendant, Dikar, S. Coop., LTDA. ("Dikar"), is a foreign corporation with its principal place of business being located at Urarte Kalea 26, Poligono Industrial San Lorenzo, 20570 Bergara, Gipuzkoa, Spain. At all times relevant herein, Dikar was engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing, and selling muzzleloading rifles throughout the United States, including the Commonwealth of Virginia. In addition, Dikar, along with one or several of the other Defendants, was involved in the voluntary recall of inline muzzleloading rifles manufactured in 1995 and 1996. For reasons aforementioned, Dikar was doing business in the Commonwealth of Virginia, but was not authorized to do so and has continuously failed to appoint an agent within this Commonwealth for service of process. Jurisdiction over this Defendant is established pursuant to the 1950 Code of Virginia, as amended, § 8.01-328.1(A)(3)-(5). Therefore, in accordance with the referenced statute, the Secretary of the Commonwealth is the statutory agent for service of process on this Defendant. In addition, the United States and Spain are both parties to the Hague Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters, TIAS No. 10072 (U. S. Treaties and other International Acts) and 20 UST 361 (U. S. Treaties and other International Agreements). Service in accordance with this International Treaty is the appropriate method for service of process herein and Dikar will be served pursuant to the requirements of the Hague Convention.

COUNT II

Jurisdiction and Venue

1. Plaintiff adopts, reaffirms, and realleges each and every allegation contained in Count I of this Complaint.

2. This is a products liability and personal injury action in which Plaintiff, Charles A. Smith, Sr., sustained severe and permanent injuries while using a product designed, manufactured, sold, and distributed by one, several, or all of the named Defendants. The accident and the Plaintiff's resulting injuries occurred near Plaintiff's residence located in Max Meadows, Wythe County, Virginia.

3. This action is of a civil nature, involving, exclusive of interest and costs, a sum in excess of Seventy Five Thousand Dollars (\$75,000.00). Every issue of law and fact herein is wholly between citizens of different states. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. § 1332.

4. For purposes of all subsequent Counts to this Complaint, Plaintiff pleads that the Defendants D. C. 1980, Inc., Defendant, D. C. 1980, Inc. f/k/a/ Connecticut Valley Arms, Inc., Defendant, Blackpowder Products, Inc., Defendant, Connecticut Valley Arms, Inc., and Defendant, Dikar, S. Coop. LTDA, acted individually, and/or jointly and collectively, in the design, manufacture, distribution, and sale of the gun and its various component parts. As a result, in all subsequent Counts to this Complaint, each Defendant herein named shall hereinafter collectively be referred to as "Defendants".

COUNT III

The Facts

1. Plaintiff adopts, reaffirms, and realleges each and every allegation contained in Counts I and II of this Complaint.

2. That in 2004, Plaintiff, Charles A. Smith, Sr., purchased a gun commonly referred to as a “muzzleloader” which had been designed, manufactured, distributed, and sold by the Defendants. That the gun is marked Connecticut Valley Arms, Inc. and bears identification and/or serial number 61-13-017971-96.

3. That the Plaintiff, Charles A. Smith, Sr., was experienced in the loading and firing of this type of gun. That subsequent to acquiring the gun, Plaintiff had shot the weapon on numerous occasions without apparent problems.

4. However, on November 10, 2006, and after properly loading the gun and while attempting to fire the same, the gun misfired and exploded in such a fashion that it caused various component parts of the gun to impact and strike Plaintiff in the right eye, face, and various parts of his head, thereby causing severe and permanent injuries, all of which are more fully set out in Count VIII of this Complaint.

5. That the failure of the Defendants to properly design, manufacture, warn, inspect and test its products, including the gun which improperly misfired on November 10, 2006, was a substantial factor in causing the injuries and damages complained of herein.

COUNT IV

Strict Liability

1. Plaintiff adopts, reaffirms, and realleges each and every allegation contained in Counts I, II, and III of this Complaint.

2. That the gun was designed and manufactured, in whole, or in part, by Defendants and was distributed and sold in the United States by said Defendants.

3. That the Defendants marketed, sold, and distributed the gun in a defective condition unreasonably dangerous to the users and consumers thereof.

4. That the Plaintiff, Charles A. Smith, Sr., was among the class of individuals who the Defendants should have known would be placed in a position of unreasonable danger by the use of the defective gun.

5. That the defective condition of the gun was a substantial factor in causing the injuries and damages to the Plaintiff, all of which are more fully set out in Count VIII of this Complaint.

COUNT V

Negligence

1. Plaintiff adopts, reaffirms, and realleges each and every allegation contained in Counts I, II, III, and IV of this Complaint.

2. That the Defendants were negligent in the design, manufacture, engineering, inspecting, testing, and in selling and distributing the gun in a defective and dangerous condition. As a result of the failure of the Defendants to use ordinary and reasonable care, the product was continuously unsafe to those persons, including the Plaintiff herein, who possessed and used the gun.

3. That the negligence herein complained of was a substantial factor in causing the injuries and damages to Plaintiff, all of which are more fully set out in Count VIII of this Complaint.

COUNT VI

Failure to Warn

1. Plaintiff adopts, reiterates, and realleges each and every allegation contained in Counts I, II, III, IV, and V of this Complaint.

2. That the Defendants either knew or upon the exercise of reasonable care should have known, that the gun and its various component parts were not safe, reliable, or suitable for the use that it was being put to by those persons, including the Plaintiff, Charles A. Smith, Sr., who might acquire, possess, and use the referenced product. That these Defendants had full knowledge of the defects in design and manufacture of the gun which imposed on the Defendants a duty to warn the class of individuals who would be placed in a position of unreasonable danger by the use of the gun, including the Plaintiff herein. And yet, the Defendants continuously failed to take necessary and appropriate actions to warn Plaintiff of the dangerous condition of the product and of the dangers associated with its use.

3. That the negligent failure of Defendants to warn about the dangerous conditions existing in the product, and with the use of the product, was a substantial factor in causing the injuries and damages to the Plaintiff, all being more fully set out in Count VIII of this Complaint.

COUNT VII

Breach of Warranties

1. Plaintiff adopts, reiterates, and realleges each and every allegation contained in Counts I, II, III, IV, V, and VI of this Complaint.

2. The Defendants expressly warranted and impliedly warranted that the gun and all of its various component parts were safe, merchantable, and fit

for the purpose for which it was manufactured and sold, and for the use by the ultimate consumer and user, including the Plaintiff herein.

3. The Defendants breached the aforementioned warranties in that the gun and its various component parts, were unsafe, were not of merchantable quality, and were unfit and dangerous for the particular purpose for which they were intended and therefore, were unfit for sale and/or use by the ultimate consumer and/or user, including the Plaintiff, Charles A. Smith, Sr.

4. The breach of one or more of said warranties by Defendants was a substantial factor in causing the injuries and damages to Plaintiff, all of which are more fully set out in Count VIII of this Complaint.

COUNT VIII

Injuries and Damages

1. Plaintiff adopts, reiterates, and realleges each and every allegation contained in Counts I, II, III, IV, V, VI and VII of this Complaint.

2. Plaintiff, Charles A. Smith, Sr., states that as a direct and proximate result of the wrongful actions and breaches of the Defendants as referred to in Count III through Count VII, that he has suffered severe and permanent injuries to his head and body, including but not limited to, loss of vision in his right eye; multiple fractures to his facial bones, jaw, and skull; and a brain injury with resulting pain, severe headaches, and depression. That as a result of the aforementioned injuries, this Plaintiff has had pain and suffering and mental anguish, and will continue to have pain, suffering and mental anguish in the future, and permanently; has incurred medical expenses, including doctor, dental, drug, and hospital bills which are now in excess of \$10,000.00, and in all

probability, will have additional medical bills and expenses in the future; has lost wages and his ability to earn money in the future has been permanently impaired; all to his damage in the sum of Five Million Dollars (\$5,000,000.00).

3. Plaintiff, Charles A. Smith, Sr., further states that the actions of the Defendants in the defective design, manufacturing, inspecting, testing, distribution, and sale of the product in an unreasonably dangerous condition; and in the negligence also associated therewith; and in its intentional failure to correct the defects and to warn of the defects and of the hazards resulting from the design and/or manufacture of defective product, and the use of the defective product, and in its failure to take action promptly to correct these said defects, constituted willful, malicious, gross conduct, and gross negligence on behalf of said Defendants, and its actions constituted oppression and malice upon and toward the Plaintiff and the Plaintiff seeks punitive damages against the Defendants in the sum of Five Million Dollars (\$5,000,000.00).

WHEREFORE, Plaintiff, Charles A. Smith, Sr., demands judgment against the Defendants as follows:

- (1) That Plaintiff, Charles A. Smith, Sr., recover compensatory and general damages in the sum of Five Million Dollars (\$5,000,000.00);
- (2) That the Plaintiff, Charles A. Smith, Sr., recover punitive damages in the sum of Five Million Dollars (\$5,000,000.00);
- (3) That Plaintiff recover his costs herein expended and for all other proper relief to which he may be entitled; and
- (4) Plaintiff demands a trial by jury.

/s/ J. D. Morefield

J. D. Morefield (VSB No. 13675)

Morefield & Largen, P. L. C.

P O Box 1327

Abingdon, Virginia 24212-1327

(276) 628-8128

(276) 676-6114 (Fax)

and

/s/ Ginger J. Largen

Ginger J. Largen (VSB No. 35260)

Morefield & Largen, PLC

P O Box 1327

Abingdon, Virginia 24212-1327

(276) 628-8128

(276) 676-6114 (Fax)

Attorneys for Plaintiff, Charles A. Smith, Sr.