

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

U.S. DIST. COURT CLERK
EAST DIST. MICHIGAN
DETROIT

2003 MAY 16 P 3:41

FILED

SHANE CONGER,
Plaintiff,

v.

No. 03-71555

CONNECTICUT VALLEY ARMS,
INC., a Georgia Corporation, and
DIKAR, S. COOP, LTDA, a foreign
corporation, jointly & severally,

HON. JULIAN ABELE COOK, JR.
MAG. JUDGE STEVEN D. PEPE

Defendants.

S. JAY AHMAD P43206
ISHBIA & GAGLEARD, P.C.
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WILLIAM D. BOOTH P10999
PLUNKETT & COONEY, P.C.
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**ANSWER TO PLAINTIFF'S COMPLAINT,
AFFIRMATIVE DEFENSES AND
RELIANCE ON JURY DEMAND**

NOW COMES DC 1980, INC., successor to CONNECTICUT VALLEY
ARMS, INC., (hereinafter "CVA") only, by and through Attorneys, PLUNKETT &
COONEY, P.C., and in Answer to Plaintiff's Complaint, states as follows:

1. In Answer to Paragraph 1, Defendant neither admits nor denies the
allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs. In
further Answer, it is averred that the suit papers were the first notice that this Defendant

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had of the incident described in the succeeding paragraphs of this Answer to Complaint, and currently it has no investigation of the matter.

2. The allegations in this Paragraph are denied as pled. In further answer, it is averred that CVA's successor corporation is DC 1980, Inc., a Georgia Corporation.

3. In Answer to Paragraph 3, Defendant admits the allegation contained therein.

4. It is admitted that CVA distributed muzzle-loaded firearms that were manufactured by others in the State of Michigan.

5. In Answer to Paragraph 5, Defendant admits the allegation contained therein upon information and belief.

6. In Answer to Paragraph 6, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

7. In Answer to Paragraph 7, Defendant denies the allegations contained therein as same are untrue.

8. In Answer to Paragraph 8, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

9. In Answer to Paragraph 9, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

10. In Answer to Paragraph 10, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs. In further answer, it is denied that CVA manufactured the muzzle-loading firearm described in this Paragraph of Plaintiff's Complaint for the same is not true.

11. In Answer to Paragraph 11, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

12. The allegations in this Paragraph are denied in that CVA did not manufacture muzzle-loading firearms, and said allegation is not true.

13. The originators of the recall and the wording of the published recall speak for themselves, and no further answer is required.

14. In Answer to Paragraph 14, Defendant denies that CVA manufactured the In-Line muzzle loading rifle described in Plaintiff's Complaint as same is untrue. As to the remaining allegations of this Paragraph, Defendant does not have sufficient information or knowledge in which to form a belief and leaves Plaintiff to his proofs.

15. In Answer to Paragraph 15, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs. In further answer, it is averred that the August 1997 national recall was publicized, and responded to by the muzzle loader using public.

16. In Answer to Paragraph 16, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

17. In Answer to Paragraph 17, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

18. In Answer to Paragraph 18, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

19. In Answer to Paragraph 19, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

20. In Answer to Paragraph 20, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

21. In Answer to Paragraph 21, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

22. In Answer to Paragraph 22, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

23. In Answer to Paragraph 23, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

24. In Answer to Paragraph 24, Defendant neither admits nor denies the allegations contained therein for lack of knowledge and leaves Plaintiff to his proofs.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained in defending this litigation.

COUNT II
[NEGLIGENCE – CONNECTICUT VALLEY ARMS]

25. Defendant hereby adopts and incorporates by reference Paragraphs 1 through 24 of this Answer to Complaint as though stated herein word for word and paragraph for paragraph.

26. In Answer to Paragraph 26, this Defendant denies the allegations contained therein as same are untrue in that DC 1980, Inc.'s predecessor, CVA, was not the manufacturer of the subject rifle nor or any of the In-Line muzzle loading rifles discussed in Plaintiff's Complaint, inclusive of sub-paragraphs a. through e.

27. In Answer to Paragraph 27, Defendant denies the allegations contained therein as same are untrue.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained in defending this litigation.

COUNT III
[NEGLIGENCE – DIKAR]

28. Defendant hereby adopts and incorporates by reference Paragraphs 1 through 27 of this Answer to Complaint as though stated herein word for word and paragraph for paragraph.

29. The allegations of Paragraph 29 are directed to Co-Defendant Dikar and therefore, no answer is required, inclusive of subparagraphs a. through e.

30. The allegations of Paragraph 30 are directed to Co-Defendant Dikar and therefore, no answer is required.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained in defending this litigation.

COUNT III (SIC)
[IMPLIED WARRANTY – CVA]

31. Defendant hereby adopts and incorporates by reference Paragraphs 1 through 30 of this Answer to Complaint as though stated herein word for word and paragraph for paragraph.

32. In Answer to Paragraph 32, this Defendant denies that it designed or manufactured the subject In-Line muzzle loading rifle, for the same is not true. It is admitted that DC 1980, Inc.'s predecessor, CVA, distributed Stag Horn In-Line muzzle loading rifles into the stream of commerce. As to the remaining allegations contained in

this Paragraph, same are outside the knowledge of this Defendant and Plaintiff is left to his proofs.

33. In Answer to Paragraph 33, Defendant denies the allegations contained therein as same are untrue, inclusive of subparagraphs a. through e.

34. In Answer to Paragraph 34, Defendant denies the allegations contained therein as same are untrue.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained in defending this litigation.

COUNT IV
[IMPLIED WARRANTY – DIKAR]

35. Defendant hereby adopts and incorporates by reference Paragraphs 1 through 34 of this Answer to Complaint as though stated herein word for word and paragraph for paragraph.

36. The allegations of Paragraph 36 are directed to Co-Defendant Dikar and therefore, no answer is required.

37. The allegations of Paragraph 37 are directed to Co-Defendant Dikar and therefore, no answer is required, inclusive of subparagraphs a. through e.

38. The allegations of Paragraph 38 are directed to Co-Defendant Dikar and therefore, no answer is required.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained in defending this litigation.

COUNT V
[NEGLIGENCE – RECALL – CONNECTICUT VALLEY ARMS]

39. Defendant hereby adopts and incorporates by reference Paragraphs 1 through 38 of this Answer to Complaint as though stated herein word for word and paragraph for paragraph.

40. In Answer to Paragraph 40, Defendant denies the allegations contained therein as same are untrue, inclusive of subparagraphs a. through c.

41. In Answer to Paragraph 41, Defendant denies the allegations contained therein as same are untrue.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs and attorneys fees so wrongfully sustained in defending this litigation.

COUNT VI
[NEGLIGENCE – RECALL – DIKAR]

42. Defendant hereby adopts and incorporates by reference Paragraphs 1 through 41 of this Answer to Complaint as though stated herein word for word and paragraph for paragraph.

43. The allegations of Paragraph 43 are directed to Co-Defendant Dikar and therefore, no answer is required, inclusive of subparagraphs a. through c.

44. The allegations of Paragraph 44 are directed to Co-Defendant Dikar and therefore, no answer is required.

WHEREFORE, Defendant, DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., prays for a Judgment of No Cause for Action together with costs

and attorneys fees so wrongfully sustained in defending this litigation.

PLUNKETT & COONEY, P.C.

BY: 

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RELIANCE ON JURY DEMAND

NOW COMES DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., by and through Attorneys, PLUNKETT & COONEY, P.C., and hereby relies on the jury demand as filed by Plaintiff on or about April 21, 2003.

PLUNKETT & COONEY, P.C.

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AFFIRMATIVE DEFENSES

NOW COMES DC 1980, INC., successor to CONNECTICUT VALLEY ARMS, INC., by and through Attorneys, PLUNKETT & COONEY, P.C., and by way of Affirmative Defenses, states as follows:

1. That the allegations of Plaintiff's Complaint are barred by virtue of the Product Liability Statutes in effect in the State of Michigan at the time Plaintiff's

cause of action occurred, and this Defendant will move for summary judgment as is provided by the Federal Rules of Civil Procedure.

2. That Plaintiff's cause of action is barred by the applicable statute of limitations, and this Defendant will move for summary judgment as provided by the Federal Rules of Civil Procedure.

3. That Plaintiff has failed to state a cause of action upon which relief can be granted against a distributor of products in the State of Michigan and this Defendant will move for summary judgment as provided by the statute of limitations.

4. That the incident described in Plaintiff's Complaint was the fault of others named and/or unnamed in Plaintiff's cause of action, and this paragraph constitutes notice of the responsibility of an unnamed party to the Plaintiff and his counsel.

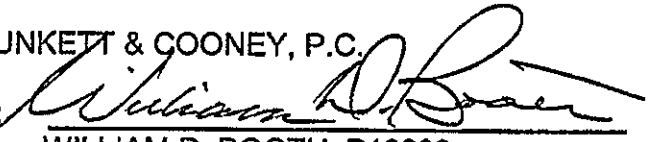
5. That the incident described in Plaintiff's Complaint may have been caused by the improper loading of an In-Line muzzle loading rifle, and such negligent loading may have been the sole proximate cause of the injury described in Plaintiff's Complaint. If this is true, then this Defendant will move for summary judgment as is provided by the Federal Rules of Civil Procedure.

6. Since the Complaint filed on behalf of Plaintiff was the first notice of the December 2002 incident giving rise to Plaintiff's Complaint, this Defendant has had no opportunity to identify or examine the firearm described in Plaintiff's Complaint, this Defendant reserves the right to file any additional Affirmative Defenses as the same

may become known through the processes of discovery.

PLUNKETT & COONEY, P.C.

BY:


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Dated: May 15, 2003

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