

IN THE CIRCUIT COURT OF OUACHITA COUNTY, ARKANSAS
SIXTH DIVISION

SHANE CURTIS

PLAINTIFF

VS.

NO. CV-2003-186-6

CONNECTICUT VALLEY ARMS, INC.,
CONNECTICUT VALLEY FIREARMS, INC.
BLACKPOWDER PRODUCTS, INC.,
D.C. 1980, INC.,
DIKAR, S. COOP. LTDA.,
ELLETT BROTHERS, INC.,
FALWELL'S INC. d/b/a WESTERN AUTO
ASSOCIATE STORE,
HODGDON POWDER COMPANY, INC.,
KNIGHT RIFLES, INC., an Affiliate of EBSCO, INC.,
MODERN MUZZLELOADING, INC.,
NOSLER, INC.,
AMMUNITION ACCESSORIES, INC.,
AND JOHN DOES 1-10

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DEFENDANTS

AMENDED COMPLAINT

Comes now the Plaintiff, Shane Curtis, by and through his attorneys, H. L. (Buddy) Slate, James F. Swindoll and the Law Offices of James F. Swindoll, and for his cause of action against the defendants, Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc, D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., Falwell's d/b/a Western Auto Associate Store, Hodgdon Powder Company, Inc., Knight Rifles, Inc., an affiliate of EBSCO, Inc., Modern Muzzleloading, Inc., Nosler, Inc., Ammunition Accessories, Inc., and John Does 1-10, alleges and states:

1. That the plaintiff is and was at all times relevant hereto a resident of Ouachita County, Arkansas.
2. That defendant Connecticut Valley Arms, Inc. is a Georgia corporation with offices at 6487 Peachtree Industrial Boulevard, Doraville, Georgia 30360; whose

registered agent for service of process is Robert Hickey, 5988 Peachtree Corners East, Norcross, Georgia 30071; and who, at all times relevant hereto, was engaged in the manufacture, assembly, distribution and sale of the subject in-line muzzleloading rifle.

3. That defendant Connecticut Valley Firearms, Inc. is a Georgia corporation with offices at 6487 Peachtree Industrial Boulevard, Atlanta, Georgia 30360; whose registered agent for service of process is Hugh R. Powell, Jr., 6487 Peachtree Industrial Boulevard, Suite A, Doraville, Georgia 30360; and who, at all times relevant hereto, was engaged in the manufacture, assembly, distribution and sale of the subject in-line muzzleloading rifle.

4. That defendant Blackpowder Products, Inc. is a Georgia corporation with offices at 5988 Peachtree Corners East, Norcross, Georgia 30071; whose registered agent for service of process is Robert Hickey, 5988 Peachtree Corners East, Norcross, Georgia 30071; which, at all times relevant hereto, was engaged in the manufacture, assembly, distribution and sale of in-line muzzleloading rifles; further, Blackpowder Products, Inc. is a successor corporation to defendant Connecticut Valley Arms, Inc.; and which was designed to be the alter ego of Connecticut Valley Arms, Inc. and to continue the business of defendant Connecticut Valley Arms, Inc., and all liabilities of Connecticut Valley Arms, Inc. are imputed by law to Blackpowder Products, Inc.

5. That defendant D.C. 1980, Inc. is a Georgia corporation with offices at 2201 Brooke Farm Trail, Atlanta, Georgia 30338; whose registered agent for service of process is Robert Hickey, 2201 Brooke Farm Trail, Dunwoody, Georgia 30338; and who, at all times relevant hereto, was engaged in the manufacture, assembly, distribution and sale of the subject in-line muzzleloading rifle; further, D.C. 1980, Inc. is a successor corporation to

defendant Connecticut Valley Arms, Inc.; and D.C. 1980, Inc. was designed to be the alter ego of Connecticut Valley Arms, Inc. and to continue the business of defendant Connecticut Valley Arms, Inc., and all liabilities of D.C. 1980, Inc. and Connecticut Valley Arms, Inc. are imputed by law to Blackpowder Products, Inc.

6. That defendant Dikar, S. Coop. LTDA. is a foreign corporation; and which, at all times relevant hereto, was engaged in the manufacture, assembly, distribution and sale of the subject in-line muzzleloading rifle, and placed said rifle into the stream of commerce directed toward plaintiff, and all times relevant hereto was a corporation intending that its product be purchased by the plaintiff and other individuals similarly situated, and that Defendant Dikar, S. Coop. LTDA. had sufficient contacts with the United States of America and the State of Arkansas to establish personal jurisdiction. Such contacts were substantial and continuous and include but are not limited to:

- a. Dikar, S. Coop. LTDA. has continuously marketed into the United States of America and the State of Arkansas millions of weapons and firearms such as the firearm causing injury to the plaintiff herein, and has targeted the American firearms market for sale of their products since 1979;
- b. Dikar, S. Coop. LTDA. has sought and gained the judicial protection of the laws of the United States of America to enforce its interests and property rights in the United States of America by seeking and being granted two patents, one for the rifle causing the injuries in this case (US Patent No. 5,109,622), and one for muzzle loading fire arm accessories (US Patent No. 4,843,747);

- c. Dikar, S. Coop. LTDA. has sought the judicial protection of the laws of the United States of America by seeking trademarks for the name "Dikar" to be affiliated with firearms and related materials, which were granted in 1986 (Registration No. 1408400) and 1994 (Registration No. 1836706);
- d. Dikar, S. Coop. LTDA. has sought the judicial protection of the laws of the United States of America by seeking copyright protection of several statues used in their business (Registration Nos. VAu-119-409, VAu-119-410, VAu-119-411, VAu-119-412).
- e. Dikar, S. Coop. LTDA. has sent agents, servants, and employees to the United States of America a minimum of two times per year over the past twenty-six (26) years for trade shows for the purpose of investigating the American firearm industry, marketing strategy in the various states, and talking to and targeting the consumers who purchase these weapons in America and Arkansas;
- f. Dikar, S. Coop. LTDA. has sent agents, servants, and employees to Shot Shows in the United States for the purpose of investigating the American firearm market and to talk to the investors of their product;
- g. Dikar, S. Coop. LTDA. has sent agents, servants, and employees to meetings with Connecticut Valley Arms for business discussions between the two companies, and to introduce Dikar to wholesale and retail companies who would be marketing and supplying the gun that Dikar, S. Coop. LTDA. manufactured;

- h. Dikar, S. Coop. LTDA. has sent agents, servants, and employees to the Connecticut Valley Arms' Warehouse in the United States of America for investigations of guns supplied by Dikar, S. Coop. LTDA. and for discussions regarding the quality control issues;
- i. Dikar, S. Coop. LTDA. manufactured these guns (including the subject weapon) for the sole sale and distribution in the United States of America as the guns could not be sold in Spain and were designed specifically to be sold in the United States of America;
- j. Dikar, S. Coop. LTDA. has participated in a joint venture to replace and/or recall component parts of similar firearms both prior to and after the event complained of herein;
- k. Dikar, S. Coop. LTDA. has sent employees to distributor shows for the purpose of improving their guns sales in the United States firearms market and to increase the market share of their products in the United States of America;
- l. Dikar, S. Coop. LTDA. commissioned market surveys to be performed in the United States of America to determine the profitability of the American firearms market and to target users such as Shane Curtis; and
- m. Dikar, S. Coop. LTDA. has shipped products directly to third parties in the United States of America and has sent shipments of guns to Bass Pro Shops, an American Corporation doing business in Arkansas.

7. That defendant Ellett Brothers, Inc. is a South Carolina corporation; whose registered agent for service of process is Roger Miller, 267 Columbia Avenue, Chapin, South Carolina 29036; and which, at all times relevant hereto, was engaged in the marketing, sale, and distribution of the subject in-line muzzleloading rifle and sold the subject weapon to Defendant Falwell's Inc. d/b/a Western Auto Associate Store.

8. That defendant Falwell's Inc. d/b/a Western Auto Associate Store is an Arkansas corporation; whose registered agent for service of process is Edward E. Falwell, 151 Adams S.E., Camden, Arkansas 71701; and which at all times relevant hereto was engaged in the retail sale of the subject in-line muzzleloading rifle and sold the subject weapon in Camden, Arkansas in 1999.

9. That defendant Hodgdon Powder Company, Inc. is a Kansas corporation with offices at 6231 Robinson, Johnson, Kansas 66202; whose registered agent for service of process is Douglas H. Delsemme, 6231 Robinson, Johnson, Kansas 66202; and which, at all times relevant hereto, was engaged in the manufacture, distribution and sale of the subject Pyrodex muzzleloading propellant recommended by defendants Connecticut Valley Arms, Inc. a/k/a Connecticut Valley Firearms, Inc. and Blackpowder Products, Inc. and which was properly used by the plaintiff herein.

10. That defendant Knight Rifles, Inc., an affiliate of EBSCO, Inc., is an Iowa corporation; whose registered agent for service of process is William Anthony Knight, 19882 140th Avenue, Plano, Iowa 52581; and which, at all times relevant hereto, was engaged in the manufacture, distribution and sale of the subject muzzleloading sabots properly used by the plaintiff herein.

11. That defendant Modern Muzzleloading Inc. is a foreign corporation; whose registered agent for service of process is CT Corporation System, 2222 Grand Avenue, Des Moines, Iowa 50312; and which, at all times relevant hereto, was engaged in the distribution and sale of the subject muzzleloading sabots properly used by the plaintiff herein.

12. That defendant Nosler, Inc. is an Oregon corporation with offices at 107 SW Columbia, Bend, Oregon 97702; whose registered agent for service of process is Robert A. Nosler, 107 SW Columbia, Bend, Oregon 97702; and which, at all times relevant hereto, was engaged in the manufacture, distribution and sale of the subject .44 caliber bullets properly used by the plaintiff herein.

13. That defendant Ammunition Accessories, Inc., is a foreign corporation; whose registered agent for service of process is C T Corporation System, 1209 Orange Street, Wilmington, Delaware, 19801; and which, at all times relevant hereto, was engaged in the manufacture, distribution and sale of the subject percussion caps properly used by the plaintiff herein.

14. That Defendants John Does 1-6 are various entities currently unknown to the plaintiff, and who are engaged in the manufacture, assembly, distribution and sale of the subject in-line muzzleloading rifle or components thereof, and are engaged in placing said subject in-line muzzleloading rifles or components in the stream of commerce in the United States of America, the state of Arkansas, and ultimately to the plaintiff.

15. That jurisdiction is proper since the plaintiff resides in Ouachita County, Arkansas and since the defendants are corporations doing business in Arkansas. Further

venue is proper since the events that give rise to this Complaint occurred in Ouachita County, Arkansas.

16. That the plaintiff, at all times relevant hereto, was free from all fault, and was acting with due regard for his own safety.

17. That notice sufficient to comply with Arkansas law has been given to the defendants herein.

18. That the defendants, at all times relevant hereto, were and are in the business of designing, manufacturing, marketing, fabricating, producing, assembling, supplying, importing, distributing and/or selling the subject in-line muzzleloading rifle, the component parts thereof, propellant, and projectiles being used at the time of the incident complained of herein and were or intended to do business in Ouachita County, Arkansas.

19. That on or about October 19, 2000, the plaintiff, Shane Curtis, was firing his CVA Stag Horn .50 caliber in-line muzzleloading rifle, serial number 0.2, 61-13-044011-95, while using the defendants' Pyrodex muzzleloading propellant, sabots, percussion caps, and .44 caliber bullets.

20. That said in-line muzzleloading rifle had been purchased at the Western Auto Associate Store in Camden, Ouachita County, Arkansas in December, 1999; that at all times relevant hereto, the plaintiff was properly using the in-line muzzleloading rifle, powder, sabots, percussion caps and bullets; and, he was unaware of any dangers to users such as himself.

21. That upon firing said in-line muzzleloading rifle, the in-line muzzleloading rifle malfunctioned causing serious, painful, and permanent injuries to the plaintiff, Shane Curtis.

22. That following the malfunction and injury, an examination of the rifle and its component parts revealed that the design and manufacture of the subject in-line muzzleloading rifle rendered it defective and unreasonably dangerous, and caused the malfunction which injured the plaintiff. Said defects include but are not limited to:

- a. the defective design of the subject in-line muzzleloading rifle and its component parts;
- b. the defective selection and use of the component parts of the in-line muzzleloading rifle;
- c. the defective configuration and interaction of the component parts;
- d. the defective manufacture and assembly of the component parts of the subject in-line muzzleloading rifle;
- e. defective and inadequate instructions of the subject in-line muzzleloading rifle which fail to adequately instruct its users of dangers of malfunction or failure; and,
- f. defective and inadequate warnings of the subject in-line muzzleloading rifle which fail to adequately warn its users of dangers of malfunction or failure.

23. That defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, acting in concert, negligently manufactured, assembled, distributed, and sold as new said in-line muzzleloading rifle in December, 1999 over three years after discovery that the weapons were defective. The manufacture, distribution, and sale of the subject weapon proximately caused the plaintiff

to sustain severe and permanent injuries and losses. Said negligence includes but is not limited to:

- a. negligent design of the subject in-line muzzleloading rifle and its component parts;
- b. negligent selection and use of the component parts of the in-line muzzleloading rifle;
- c. negligent configuration of the interaction of the component parts;
- d. negligent manufacture and assembly of the component parts of the subject in-line muzzleloading rifle;
- e. negligent instruction on the subject in-line muzzleloading rifle which fail to adequately instruct its users on dangers of malfunction or failure;
- f. inadequate warnings on the subject in-line muzzleloading rifle which fail to adequately warn the users of dangers of malfunction or failure;
- g. negligently failing to adequately recall the subject in-line muzzleloading rifle;
- h. negligently failing to warn the user after the sale of the emerging dangers of usage of the subject in-line muzzleloading rifle; and,
- i. negligently failing to otherwise use ordinary care under the circumstances.

24. That at the time of the manufacture, distribution, assembly, and sale of the subject in-line muzzleloading rifle used by the plaintiff, the defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc.,

Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, acting in concert, knew or should have known in the exercise of reasonable care the particular purpose for which said in-line muzzleloading rifle was to be used. The defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, acting in concert, expressly and impliedly warranted the subject in-line muzzleloading rifle as adequate for its intended use and should have known in the exercise of reasonable care that the plaintiff was relying upon said defendants' warranties, judgment and skill to safely use the subject in-line muzzleloading rifle. The breaches of express and implied warranties were a proximate cause of the injuries as hereinafter alleged.

25. That defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, acting in concert, became aware at least by 1997 that the subject in-line muzzleloading rifles were defective and unreasonably dangerous, failed to recall or otherwise warn of this known danger, and put profits over people; that said defendants knew or should have known, in the light of the surrounding circumstances, that their conduct would naturally and probably result in injuries and damages to users such as the plaintiff and that they continued such conduct with malice and with reckless disregard of the consequences from which malice may be inferred; and that said conduct subjects the defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S.

Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, jointly and severally, to punitive damages.

26. That defendant Hodgdon Powder Company, Inc., Knight Rifles, Inc., an affiliate of EBSCO, Inc., Modern Muzzleloading, Inc., Nosler, Inc., and Ammunition Accessories, Inc., acting in concert, supplied the components for combustion and discharge of the projectile fired by the plaintiff on October 19, 2000, and that said components were defective and unreasonably dangerous in that the resulting explosion was a proximate cause of injuries to the plaintiff.

27. That defendants John Does 1-10 participated in the manufacture, assembly, distribution and sale of the subject in-line muzzleloading rifle, component parts of the rifle, the propellant, and the projectiles involved in the combustion and discharge of the projectile fired by the plaintiff on October 19, 2000, and that said components were defective and unreasonably dangerous in that the resulting explosion was a proximate cause of injuries to the plaintiff.

28. That as a direct and proximate result of the defendants' conduct both jointly and severally, the plaintiff, Shane Curtis, incurred severe and permanent personal injuries which include loss of vision, damage to his eye, pain and suffering, scarring and defamation, wage loss, loss of earning capacity, care taking expenses, and other damages both past and future in a sum in excess of the minimum federal jurisdictional limits.

29. That as a direct and proximate result of the defendants' conduct both jointly and severally, the plaintiff has incurred doctor, medical, and hospital bills, and will in the future incur additional doctor, medical, and hospital bills for treatment of his injuries.

30. That as a direct and proximate result of the defendants' conduct both jointly and severally, the plaintiff has experienced past, present, and future physical pain and suffering and mental anguish as a result of his injuries in a sum in excess of the minimum federal jurisdictional limits.

31. That as a direct and proximate result of the defendants' conduct both jointly and severally, the injuries sustained by the plaintiff have affected both his past and present wages, and his future earnings capacity in a sum in excess of the minimum federal jurisdictional limits.

32. That the plaintiff is entitled to punitive damages from defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, both jointly and severally, in a sum in excess of the minimum federal jurisdictional limits.

33. That the plaintiff demands a trial by jury.

WHEREFORE, the plaintiff prays he have judgment of and against the defendants, Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western Auto Associate Store, Hodgdon Powder Company, Inc., Knight Rifles, Inc., an affiliate of EBSCO, Inc., Modern Muzzleloading, Inc., Nosler, Inc., Ammunition Accessories, Inc., and John Does 1-10, jointly and severally, in a sum in excess of the minimum federal jurisdictional limits, for punitive damages against defendants Connecticut Valley Arms, Inc., Connecticut Valley Firearms, Inc., Blackpowder Products, Inc., D.C. 1980, Inc., Dikar, S. Coop. LTDA., Ellett Brothers, Inc., and Falwell's Inc. d/b/a Western

Auto Associate Store, in a sum in excess of the minimum federal jurisdictional limits, for a trial by jury, for his costs herein expended, and for all other just and proper relief to which he might be entitled.

Respectfully submitted,

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