

MARK W. KOHN, JR.
1961 Stanton Street
Dubuque, IA 52001,

ALEX R. KOHN, a Minor,
1961 Stanton Street
Dubuque, IA 52001, and

MEGAN E. KOHN, a Minor,
1961 Stanton Street
Dubuque, IA 52001

Plaintiffs,

and

MEDICAL ASSOCIATES HEALTH PLAN, INC.
d/b/a MEDICAL ASSOCIATES HEALTH PLANS
1605 Associates Drive, Suite 101
Dubuque, IA 52002

Involuntary Plaintiff,

vs.

BLACKPOWDER PRODUCTS, INC.
d/b/a CONNECTICUT VALLY ARMS, INC.
5988 Peachtree Corners East
Norcross, GA 30071,

ABC INSURANCE COMPANY,

CABELA'S RETAIL, INC.
One Cabela Drive
Sidney, NE 69160, and

DEF INSURANCE COMPANY

Defendants.

COMPLAINT

Case No. 06CV 635

Case Code: 30100
Products Liability

This action includes a claim for money judgment which is believed to be greater than the amount set forth in Wis. Stat. § 799.01(1)(d).

CLERK OF CIRCUIT COURT
FILED

NOV 27 2006

DIANE PERKINS, Clerk
GRANT COUNTY, WIS.

The plaintiffs, Mark W. Kohn, Jr., Alex R. Kohn, and Megan E. Kohn, by their attorneys, Kopp, McKichan, Geyer, Skemp & Stombaugh, LLP, as and for their Complaint against the defendants, allege as follows:

PARTIES

1. The plaintiff, Mark W. Kohn, Jr. (“Mr. Kohn”), is an adult resident of the State of Iowa who resides at 1961 Stanton Street, Dubuque, IA 52001.
2. The plaintiff, Alex R. Kohn, whose date of birth is May 1, 1996, is and was at the time of the incident described herein the minor child of Mark W. Kohn, Jr., who resides at 1961 Stanton Street, Dubuque, IA 5200.
3. The plaintiff, Megan E. Kohn, whose date of birth is September 3, 1998, is and was at the time of the incident described herein the minor child of Mark W. Kohn, Jr., who resides at 1961 Stanton Street, Dubuque, IA 5200.
4. On information and belief, the involuntary plaintiff, Medical Associates Health Plan, Inc., d/b/a Medical Associates Health Plans (“Medical Associates”), is a foreign corporation with a principal office located at 1605 Associates Drive, Suite 101, Dubuque, IA 52002. Medical Associates, whose registered agent for service of process is John Tallent, 1605 Associates Drive, Suite 101, Dubuque, IA 52002, is a proper party to this matter pursuant to Wis. Stat. § 803.03 by virtue of medical payments that it has made to or on behalf of Mr. Kohn.
5. On information and belief, the defendant, Blackpowder Products, Inc., d/b/a Connecticut Valley Arms, Inc. (“CVA”), is a foreign corporation with its principal office located at 5988 Peachtree Corners East, Norcross, GA 30071. CVA does substantial business in the State of Wisconsin, and its registered agent for service of process is Robert Hickey, 5988 Peachtree Corners East, Norcross, GA 30071.
6. On information and belief, ABC Insurance Company is an as yet unidentified company which may have provided liability insurance to CVA at all times relevant to this complaint. The identity of ABC Insurance Company will be applied and substituted once its proper name and address are discovered.
7. On information and belief, Cabela’s Retail, Inc. (“Cabela’s”), is a foreign corporation with a principal office located at One Cabela Drive, Sidney, NE 69160, and, which operates a retail store located at 33901 State Hwy 35, Prairie du Chien, WI 53821. Cabela’s does substantial business in Grant County, Wisconsin, and its registered agent for service of process is CT Corporation System, 8025 Excelsior Drive #200, Madison, WI 53717.
8. On information and belief, DEF Insurance Company is an as yet unidentified company which may have provided liability insurance to Cabela’s at all times relevant to this complaint. The identity of DEF Insurance Company will be applied and substituted once its proper name and address are discovered.

GENERAL ALLEGATIONS

9. On November 29, 2004, Mr. Kohn purchased a CVA muzzleloading rifle, model PR4702-Kodiak 209 Magnum .50 Cal (“the CVA rifle”), at a Cabela’s retail store located at 33901 State Hwy 35, Prairie du Chien, WI 53821.
10. The CVA rifle that Mr. Kohn purchased was distributed to Cabela’s by CVA.
11. On November 30, 2004, Mr. Kohn exercised due care in loading the CVA rifle for the first time.
12. The CVA rifle malfunctioned upon its first discharge, and it exploded in the face of Mr. Kohn.
13. As a result of the malfunction, Mr. Kohn sustained severe personal injuries that are permanent in nature and that have resulted in past and future pain, suffering, and disability; past lost wages and future loss of earning capacity; and past and future medical expenses.

CAUSES OF ACTION

First Cause of Action: Strict Product Liability against CVA and Cabela’s

14. Reallege and incorporate by reference the foregoing paragraphs of this Complaint.
15. CVA and Cabela’s are in the business of distributing and selling muzzleloading rifles of the type sold to Mr. Kohn.
16. The CVA rifle sold to Mr. Kohn was in a defective and unreasonably dangerous condition when distributed by CVA and when sold by Cabela’s, and it was distributed and sold with inadequate and insufficient instructions or warnings as to its unsafe nature.
17. The CVA rifle was expected to and did reach Mr. Kohn without a substantial change in its condition.
18. The defective condition of the CVA rifle, including the inadequate and insufficient instructions or warnings as to its unsafe nature, was a cause of Mr. Kohn’s injuries and damages.

Second Cause of Action: Negligence against CVA and Cabela’s

19. Reallege and incorporate by reference the foregoing paragraphs of this Complaint.

20. CVA and Cabela's have a duty to distribute and sell products that are safe, to provide adequate instructions on the safe use of their products, and to warn consumers of the dangers associated with their products.
21. CVA and Cabela's breached this duty by selling the unsafe CVA rifle to Mr. Kohn with inadequate and insufficient instructions or warnings as to its unsafe nature.
22. The breach of duty by CVA and Cabela's was a cause of Mr. Kohn's injuries and damages.

Third Cause of Action: Breach of Warranty against CVA

23. Reallege and incorporate by reference the foregoing paragraphs of this Complaint.
24. CVA expressly warranted to Mr. Kohn that the CVA rifle which he purchased would be free of defects in material or workmanship.
25. CVA also was subject to an implied warranty of merchantability and an implied warranty of fitness for particular purpose with respect to the CVA rifle.
26. CVA breached these warranties because the CVA rifle sold to Mr. Kohn was defective and unreasonably dangerous.
27. The breach of warranty by CVA was a cause of Mr. Kohn's injuries and damages.

Fourth Cause of Action: Loss of Society and Companionship Claim against CVA and Cabela's

28. Reallege and incorporate by reference the foregoing paragraphs of this Complaint.
29. The negligence of CVA and Cabela's in distributing and selling the unsafe CVA rifle to Mr. Kohn with inadequate and insufficient instructions or warnings as to its unsafe nature has caused Plaintiffs Alex R. Kohn and Megan E. Kohn to be deprived of the society and companionship of their father, Mr. Kohn.

WHEREFORE, the plaintiffs demand judgment against the defendants, CVA, Cabela's, and their respective insurers, jointly and severally, as follows:

1. For fair and reasonable compensation to Mark W. Kohn, Jr., for his injuries and damages;
2. For fair and reasonable compensation to Alex R. Kohn and Megan E. Kohn for the loss of society and companionship of their father;
3. For the taxable costs and disbursements associated with this action; and

4. For such other and further relief as the Court may deem just and equitable.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY

Dated this 27th day of November, 2006.

KOPP, McKICHAN, GEYER,
SKEMP & STOMBAUGH, LLP
Attorneys for Plaintiffs, Mark W. Kohn, Jr., Alex R.
Kohn, and Megan E. Kohn

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