

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

SEP 29 2004

JAMES W. MCCORMACK, CLERK
By:  DEP. CLERK

**HERBERT SULLINS and TAMMY SULLINS,
His Wife**

PLAINTIFFS

V. NO. 4-04-CV-792 GH

**BLACK POWDER PRODUCTS, INC. and
HODGDON POWDER COMPANY, INC.**

DEFENDANTS

AMENDED COMPLAINT

Plaintiffs, for their amended complaint, state:

1. Plaintiffs are citizens and residents of Monroe County, Arkansas.
2. Defendant Black Powder Products, Inc. is a foreign corporation organized under the laws of a state other than Arkansas.
3. Defendant Hodgdon Powder Company, Inc. is a corporation organized under the laws of the state of Missouri with its principal place of business in Missouri.
4. Both defendants are authorized to do business and are doing business in Arkansas.
5. The events complained of herein occurred in the Eastern District of Arkansas.
6. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.
7. On or about January 5, 2002, plaintiff Herbert Sullins was deer hunting. He was using a .50 caliber muzzle loading gun manufactured and distributed by Black Powder Products, Inc. He was also using a propellant called Pyrodex which was manufactured and distributed defendant Hodgdon Powder Company, Inc. (Hodgdon)
8. After plaintiff Herbert Sullins completed his hunt, it was necessary to unload the

muzzle loader. To do so, plaintiff Herbert Sullins fired the muzzleloader into the air. When he did so, the muzzleloader exploded, causing severe personal injuries to plaintiff Herbert Sullins.

COUNT I - STRICT LIABILITY

9. The muzzle loader which plaintiff Herbert Sullins was using at the time he was injured was manufactured, distributed and supplied by defendant Black Powder Products, Inc.. Black Powder Products, Inc. was engaged in the business of manufacturing and distributing muzzle loaders.

10. The muzzle loader was supplied by Black Powder Products, Inc. in a defective condition which rendered it unreasonably dangerous.

11. The defective condition of the muzzle loader was the proximate cause of plaintiff Herbert Sullins' damages.

12. Defendant Hodgdon manufactured, supplied and distributed the Pyrodex which plaintiff was using at the time of his injury. Defendant Hodgdon was in the business of doing so.

13. The Pyrodex supplied by defendant Hodgdon was in a defective condition which rendered it unreasonably dangerous.

14. The defective condition of the Pyrodex was a proximate cause of plaintiff Herbert Sullins' injuries.

COUNT II - NEGLIGENCE

15. The muzzleloader manufactured and supplied by defendant Black Powder Products, Inc. was constructed with metal which Black Powder Products, Inc. knew or should have known would explode when fired. In fact, Black Powder Products, Inc. recalled its muzzle loaders in 1997 because barrels on the muzzle loaders exploded when fired.

16. Defendant Black Powder Products, Inc. was negligent in manufacturing and distributing a muzzle loader which had a barrel which was susceptible to explode when it was fired. Defendant Black Powder Products, Inc. was negligent in failing to adequately advertise and notify purchasers and/or users of its muzzle loaders of the defect in the muzzle loaders.

17. Plaintiff Herbert Sullins was injured as a proximate result of defendant Black Powder Products, Inc. negligence.

18. Defendant Black Powder Products, Inc. has examined the muzzle loader at issue in this case. Defendant Black Powder Products, Inc. contends that the explosion of the muzzle loader was not the result of any defect in the muzzle loader. Instead, Black Powder Products, Inc. contends that the explosion of the muzzle loader was the result of the use of "smokeless" gun powder.

19. Black Powder Products, Inc. recommends the use of Pyrodex in its muzzle loaders. Plaintiff purchased a container which purported to be, and was labeled to be, Pyrodex, which was manufactured by Hodgdon. If, in fact, the container which plaintiff purchased and which was labeled Pyrodex did not contain Pyrodex, but contained smokeless gun powder, defendant Hodgdon was negligent in placing smokeless powder in a container labeled Pyrodex.

20. Plaintiff Herbert Sullins' injuries were proximately caused by the negligence of defendant Hodgdon.

21. As a proximate result of the negligence and fault of defendants, plaintiff Herbert Sullins had incurred medical expenses and will do so in the future, has lost wages and will do so in the future, has lost earning capacity, has scars and disfigurement, has sustained a permanent injury, and has suffered pain and mental anguish in the past and will do so in the future.

22. As a proximate result of defendants' negligence, plaintiff Tammy Sullins has lost the consortium of her husband.

23. Plaintiffs demand a trial by jury.

Wherefore, plaintiffs pray judgment against defendants, jointly and severally, in an amount in excess of \$75,000.00, for their costs and all other proper relief.

Respectfully submitted,

Timothy O. Dudley, #82055
114 South Pulaski Street
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BY:  _____

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following on this 21 day of September, 2004:

Mr. James E. Singer
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BY:  _____