

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

CIVIL ACTION NO. 1:03 CV-190-R

FILED
DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN, KY
OCT 13 11:15 AM '03

TERRY EMBRY and
YULANDA EMBRY

PLAINTIFFS

VS.

COMPLAINT

CONNECTICUT VALLEY ARMS

Serve: Secretary of State
Room 86

Capitol Building
Frankfort, KY 40601

Serve: Mr. Robert Hickey
5988 Peachtree Corners East
Norcross, GA 30071

and

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

Serve: Secretary of State
Room 86

Capitol Building
Frankfort, KY 40601

Serve: Mr. Robert Hickey
2201 Brooke Farm Trail
Dunwoody, GA 30338

and

DIKAR, S. COOP., LTDA.

DEFENDANTS

Serve: Secretary of State
Room 86

Capitol Building
Frankfort, KY 40601

Serve: Urarte Kalea 26
20570 Bergara, Gipuzkoa
Spain

The plaintiffs, Terry Embry and Yulanda Embry, for their cause of action against the defendants, states as follows:

PARTIES AND JURISDICTION

1. The plaintiffs, Terry Embry and Yulanda Embry (hereinafter sometimes collectively referred to as "Embry"), are citizens of the United States and residents of Bonnieville, Hart County, Kentucky.

2. The defendant, Connecticut Valley Arms is a Georgia corporation with its principal place of business located at 5988 Peachtree Corners East, Norcross, Georgia 30071. At all times relevant herein, the defendant was engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing and selling muzzleloading rifles throughout the United States, including the Commonwealth of Kentucky. The defendant was involved in the voluntary recall of in-line muzzleloading rifles manufactured in 1995 and 1996. By virtue of KRS 454.210 the defendant has appointed the Kentucky Secretary of State as its agent for service of process. The defendant's registered agent in Georgia is Robert Hickey at the above referenced business address.

3. The defendant, D.C. 1980, Inc, f/k/a Connecticut Valley Arms, Inc., is a Georgia corporation with its principal place of business located at 2201 Brooke Farm Trail, Dunwoody, Georgia 30338. At all times relevant herein, the defendant was

engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing and selling muzzleloading rifles throughout the United States, including the Commonwealth of Kentucky. The defendant was involved in the voluntary recall of in-line muzzleloading rifles manufactured in 1995 and 1996. By virtue of KRS 454.210 the defendant has appointed the Kentucky Secretary of State as its agent for service of process. The defendant's registered agent in Georgia is Robert Hickey at the above referenced business address.

4. The defendant, Dikar, S. Coop. Ltda. ("Dikar"), is a foreign corporation with its principal place of business located at Urarte Kalea 26, Poligono Industrial San Lorenzo, 20570 Bergara, Gipuzkoa, Spain. At all times relevant herein, the defendant was engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing and selling muzzleloading rifles and/or supplying component parts for the designing, manufacturing, constructing, assembling, marketing, distributing and selling muzzleloading rifles throughout the United States, including the Commonwealth of Kentucky. The defendant was involved in the voluntary recall of in-line muzzleloading rifles manufactured in 1995 and 1996. By virtue of KRS 454.210 the defendant has appointed the Kentucky Secretary of State as its agent for service of process. The defendant is also being served pursuant to steps under the Hauge Convention.

5. This Court has original jurisdiction over this matter under 28 U.S.C. § 1332 as this case involves citizens of different states and of a foreign state and the matter in controversy exceeds the sum or value of \$75,000.

CAUSES OF ACTION

6. On or about December 1, 2002, Terry Embry was target shooting with a black powder muzzleloading rifle owned by Terry Embry and manufactured by the defendants for ultimate sale to the public.

7. The defendants negligently designed, manufactured, constructed, assembled, marketed, distributed and sold the muzzleloading rifle in a dangerous and defective condition in that while firing the rifle, the rifle exploded causing Terry Embry serious and permanent injuries.

8. Since being injured by the defendants' product, Terry Embry has learned that the defendants issued a voluntary recall of all muzzleloading rifles of the kind owned and being fired by Terry Embry on December 1, 2002. The voluntary safety recall notice was issued by the defendants because it had been determined that muzzleloading rifles, like the one owned by Terry Embry, were designed, manufactured, constructed, assembled, marketed, distributed and sold by the defendants with a specific defect that allowed parts of the rifles to explode backwards. A copy of this voluntary safety recall notice is attached hereto as **EXHIBIT A** and incorporated herein as if set forth in full.

COUNT I NEGLIGENCE

9. Embry restates and realleges each and every allegation contained in Paragraphs 1-8 of their Complaint.

10. The defendants owed a duty to the public, including Terry Embry, to design, manufacture, construct, assemble, market, distribute and sell its muzzleloading rifles and their component parts in a reasonably safe condition.

11. In violation of this duty, the defendants negligently and gross negligently designed, manufactured, constructed, assembled, marketed, distributed and sold the muzzleloading rifle and its component parts owned by Terry Embry in a dangerous and defective condition unsafe for its intended use.

12. As a direct and proximate result of the negligence and gross negligence of the defendants, Terry Embry sustained severe and permanent injuries.

13. As a further direct and proximate result of the negligence and gross negligence of the defendants, Terry Embry suffered great pain and suffering, and his earning capacity and ability to labor and earn money was totally destroyed, all in amounts in excess of the jurisdictional limits of this Court.

14. The negligence of the defendants, as set forth above, was so gross and wanton so as to entitle Terry Embry to recover an award of punitive damages, all in amounts in excess of the jurisdictional limits of this Court.

**COUNT II
BREACH OF WARRANTY**

15. Embry restates and realleges each and every allegation contained in Paragraphs 1-14 of their Complaint.

16. At the time Terry Embry purchased the muzzleloading rifle and its component parts designed, manufactured, constructed, assembled, marketed, distributed

and sold by the defendants, the defendants impliedly and expressly warranted that the rifle was merchantable, safely designed, and fit for the purpose for which it was designed, produced, sold, and intended to be used.

17. The defendants breached these implied and express warranties described above, in that the muzzleloading rifle and its component parts manufactured and sold by the defendants was not of merchantable quality, safely designed, nor safe and fit for its intended uses.

18. As a direct and proximate result of the defendants' breach of its implied and express warranties, Terry Embry sustained severe and permanent injuries.

19. As a further direct and proximate result of the defendants' breach of their implied and express warranties, Terry Embry suffered great pain and suffering, and his earning capacity and his ability to labor and earn money was totally destroyed, all in amounts in excess of the jurisdictional requirements of this Court.

COUNT III STRICT PRODUCTS LIABILITY

20. Embry restates and realleges each and every allegation contained in Paragraphs 1-19 of their Complaint.

21. The muzzleloading rifle and its component parts designed, manufactured, constructed, assembled, marketed, distributed and sold by the defendants, and its component parts, were defective as to design, manufacture, and warnings, causing the rifle and its component parts to be in a defective condition unreasonably dangerous to the user, including Terry Embry.

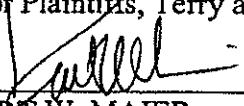
22. The muzzleloading rifle and its component parts were designed, manufactured, constructed, assembled, marketed, distributed and sold by the defendants in a defective condition unreasonably dangerous to the user, including Terry Embry, and the rifle and its component parts were expected to and did reach the user, Terry Embry, without substantial change in the condition in which they was manufactured or without unforeseeable modifications or alterations.

23. As a direct and proximate result of the defective condition unreasonably dangerous to Terry Embry, Terry Embry sustained severe and permanent injuries, for which the defendants are strictly liable.

24. As a further direct and proximate result of the defective and unreasonably dangerous condition of the muzzleloading rifle and its component parts, Terry Embry suffered great pain and suffering, and his earning capacity and ability to labor and earn money was totally destroyed, all in amounts in excess of the jurisdictional limits of this Court, for which the defendants are strictly liable.

25. In designing, manufacturing, constructing, assembling, marketing, distributing and selling the muzzleloading rifle and its component parts, owned and purchased by Terry Embry, in a defective condition unreasonably dangerous to Embry, the defendants acted in reckless disregard for the rights of Terry Embry and, therefore, Terry Embry is further entitled to an award of punitive damages.

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WARNING:

**DO NOT USE CVA IN-LINE RIFLES WITH
95 OR 96 SERIAL NUMBERS
SERIOUS INJURY MAY RESULT
RECALL REMINDER**

In 1997, Connecticut Valley Arms, Inc., voluntarily implemented a recall of in-line muzzleloading rifles manufactured in 1995 and 1996. If you currently own or possess a CVA in-line rifle with a 95 or 96 serial number, or you purchased one or gave it or sold it to another person, and the barrel has not been replaced, you should contact a Company Representative immediately by calling the customer service number below:

1-770-449-4687(8:30 a.m. to 4:00 p.m. EST)

To identify the rifle, read the serial number on the barrel opposite the firing bolt. The only CVA rifles subject to the voluntary recall are in-line models with serial numbers ending with the last two digits of 95 or 96. No other firearm models within the CVA product line are affected by the voluntary recall.

Blackpowder Products, Inc. purchased the assets of Connecticut Valley Arms, Inc. in May, 1999. Blackpowder Products, Inc. assumed no liability for any product manufactured or sold prior to January 1, 1998. Blackpowder Products, Inc. is continuing the Connecticut Valley Arms, Inc. recall, and will cover all related shipping and repair charges. Please do not return your in-line rifle before contacting a Company Representative at the above customer service number.

