

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JAMES BONINI
CLERK

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

GLEN UNDERWOOD,

Plaintiff,

v.

CONNECTICUT VALLEY ARMS,
INC.; BLACKPOWDER PRODUCTS,
INC.; CABELA'S INC.; HODGDON
POWDER COMPANY; POWERBELT
BULLETS; DIKAR, S. COOP., LTD.;
and JOHN DOE DEFENDANTS #1-5,

Defendants.

Case No.

2 : 10 cv 104

NOTICE OF REMOVAL **JUDGE MARBLEY**

JURY DEMAND

MAGISTRATE JUDGE KING

Defendant Accura Bullets, LLC d/b/a Powerbelt Bullets i/s/h/a Powerbelt Bullets ("Powerbelt"), by and through its undersigned counsel, files this Notice of Removal of the above-entitled action from the Court of Common Pleas, Guernsey County, State of Ohio to the United States District Court for the Southern District of Ohio, Eastern Division. By this petition, Powerbelt gives notice of the removal of this action. This notice of, and petition for, removal is made pursuant to 28 U.S.C. §§ 1441, *et seq.*, and is proper and appropriate based upon the following:

I. INTRODUCTION.

1. Defendant desires to exercise its right under the provisions of 28 U.S.C. §§ 1441, *et seq.*, to remove this case from the Court of Common Pleas, Guernsey County, State of Ohio, where this case was pending under the case style of *Glen Underwood v. Connecticut Valley Arms, Inc, et al.*, Case No. 09PI000703. Specifically, 28 U.S.C. § 1441 provides:

Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States

for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a).

2. Plaintiff filed his Complaint on or about December 17, 2009 seeking damages for personal injuries when a .45 caliber muzzleloader allegedly “exploded in his face.” (*See* Ex. A, Plt. Compl. 12/17/09 at ¶ 18.) The Summons was mailed, via regular mail, to Defendant Powerbelt on or about January 7, 2010. (*See* Ex. B, Summons 1/7/10; Ex. C, Guernsey County Docket Sheet.) Upon information and belief, Defendant Powerbelt received the Summons and Complaint on or about January 11, 2010.

3. Defendant Powerbelt reserves all objections, arguments, and defenses to Plaintiff’s Complaint. A responsive motion or pleading will be filed in accordance with Rule 81 of the Federal Rules of Civil Procedure.

4. Copies of all process, pleadings and orders served upon Defendant Powerbelt are collectively attached to this Notice of Removal.

II. NOTICE OF REMOVAL IS TIMELY.

5. The time in which Defendant Powerbelt is required to move, answer or otherwise plead in response to Plaintiff’s Complaint has not elapsed.

6. Pursuant to the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is timely filed pursuant to Rule 11 of the Federal Rules of Civil Procedure within thirty (30) days after the receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which Plaintiff’s action is based.

III. DIVERSITY JURISDICTION EXISTS.

7. Removal is authorized by 28 U.S.C. § 1441 and is based on the United States District Court's original jurisdiction of the case pursuant to 28 U.S.C. § 1332 because (1) there is diversity of citizenship between the plaintiff and the defendants and (2) the amount in controversy exceeds \$75,000.

A. Diversity of Citizenship.

8. At the time of the commencement of this action and at all times thereafter Defendant Powerbelt has been and is an Idaho corporation with its principal place of business in Nampa, Idaho.

9. Upon information and belief, at the time of the commencement of this action and at all times thereafter, Defendant Connecticut Valley Arms, Inc. ("CVA") has been and is a Georgia corporation with a principal place of business in Georgia.

10. Upon information and belief, at the time of the commencement of this action and at all times thereafter, Defendant Blackpowder Products, Inc. ("BPI") has been and is a Georgia corporation with a principal place of business in Georgia.

11. Upon information and belief, at the time of the commencement of this action and at all times thereafter, Defendant Cabela's Inc ("Cabela's") has been and is a Delaware corporation with its principal place of business in Nebraska.

12. Upon information and belief, at the time of the commencement of this action and at all times thereafter, Defendant Hodgdon Powder Company ("Hodgdon") has been and is a Kansas corporation with its principal place of business in Kansas.

13. Upon information and belief, at the time of the commencement of this action and at all times thereafter, Defendant Dikar, S. Coop., Ltd. ("Dikar") has been and is a Spanish corporation with its principal place of business in Spain.

14. The remaining “John Doe” defendants are fictitious and must be disregarded for purposes of diversity jurisdiction. *See, e.g., Derungs v. Wal-Mart Stores, Inc.*, 162 F. Supp. 2d 861, 863 n. 4 (S.D. Ohio 2001) (“It is well settled that the citizenship of John or Jane Doe defendants is disregarded for purposes of determining diversity.”).

15. Since Plaintiff is a resident of Guernsey County, Ohio (*see* Exhibit A, Plaintiff’s Complaint at ¶ 1) and no Defendant is incorporated or has its principal place of business in Ohio, complete diversity exists between Plaintiff and Defendants.

B. Amount in Controversy.

16. Plaintiff’s Complaint fails to specify the amount of damages sought. (*See* Ex. A, Plt. Compl. at p. 14 (“Plaintiff Glen Underwood prays for damages against the Defendants for compensatory, consequential, incidental, special, and medical damages in an amount in excess of \$25,000”)) Based upon a “fair reading” of the damages sought by Plaintiff, however, it is apparent that the amount in controversy exceeds the jurisdictional threshold.

17. In cases where the amount a plaintiff seeks to recover is not specified, the defendant must demonstrate that “more likely than not” the amount in controversy will exceed \$75,000. *See Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 158 (6th Cir. 1993) (holding that when the plaintiff seeks to recover an unspecified amount that is not self-evidently greater or less than the federal amount-in-controversy requirement, the “more likely than not” test is the appropriate burden of proof); *Long v. McKesson HBOC Red Line Healthcare*, No. C2-01-1226, 2002 WL 1578840, *4 (S.D. Ohio Apr. 26, 2002) (same). In such a situation, the defendant is permitted to demonstrate that the amount in controversy requirement is met based on a “fair reading of the complaint.” *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 574 (6th Cir. 2001); *Gantzer v. Langley*, No. 2:09-cv-295, 2009 WL 1604799 *2 (S.D. Ohio. June 2, 2009). Furthermore, in addition to compensatory damages, claims for punitive damages should be included in any assessment of the amount in controversy. *See, e.g., Clark v. Nat’l*

Traveler Life Ins. Co., 518 F.3d 560, 572 (6th Cir. 1975); *Karl v. Bizar*, No. 2:09-CV-34, 2009 WL 2175981, *3 (S.D. Ohio July 21, 2009).

18. According to the allegations in his Complaint, as a result of the alleged incident, Plaintiff claims to have “sustained severe facial damage,” including loss of eyesight in his right eye. (*See* Ex. A, Plt. Compl. at ¶¶ 18-22.) Plaintiff alleges further that “at least one piece of glass was found in [his] face” after the purported incident. (*Id.* at ¶ 19.) Based on the alleged incident, Plaintiff seeks monetary damages for, *inter alia*, the following:

Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.

[He] has suffered severe pain, suffering, mental anguish, and loss of enjoyment of life and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

(*Id.* at ¶¶ 21-22.) Plaintiff also seeks punitive damages. (*Id.* at ¶¶ 64-65.)

19. As such, based on a fair reading of the Complaint, Defendant has a good faith belief that the amount in controversy, exclusive of interest and costs, exceeds \$75,000.

IV. CONFORMITY WITH THE RULE OF UNANIMITY.

20. The “rule of unanimity” requires that all the defendants to an action who have been served or otherwise properly joined in the action either join in the removal or file a written consent to the removal. *Brierly v. Alusuisse Flexible Packaging, Inc.*, 184 F.3d 527, 533 n. 3 (6th Cir. 1999).

21. Upon information and belief, Defendants Cabela’s and Hodgdon were served on December 21, 2009, and Defendants CVA and BPI were served on December 28, 2009. (*See* Ex. C,

Guernsey County Docket Sheet.) All of the above named defendants who have been served with the Summons and Complaint have consented to removal.

22. Upon information and belief, Defendant Dikar has not been served with the Summons and Complaint as of the date of removal. Counsel for Dikar has confirmed that once Dikar is properly and effectively served with the Summons and Complaint, it will formally file a written consent to removal in conformity with all requirements.

23. Thus, based on the foregoing, all Defendants have consented to removal, and the “rule of unanimity” is satisfied.

V. REMOVAL TO THIS DISTRICT IS PROPER.

24. This case is being removed from the Court of Common Pleas, Guernsey County, State of Ohio to the United States District Court for the Southern District of Ohio, Eastern Division, which is authorized pursuant to 28 U.S.C. §§ 1441, *et seq.*

VI. CONCLUSION.

25. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal is being filed with the Clerk of Court of the Guernsey County, Court of Common Pleas, as required by law, and a copy of this Notice of Removal is being served on Plaintiff. (*See Ex. E, Notice of Filing of Removal 2/3/10.*)

26. Defendant reserves the right to amend or supplement this Notice of Removal, and Defendant reserves all defenses.

27. Defendant requests a trial by jury.

WHEREFORE, Defendant Powerbelt prays that this case be removed from the Court of Common Pleas, Guernsey County, State of Ohio to this Court for the exercise of jurisdiction over

this action as though this case had been originally instituted in this Court and that no further proceedings be had in the Guernsey County Court of Common Pleas.

Dated: February 4, 2010
Cleveland, Ohio

Respectfully submitted,

REMINGER CO. LPA

By: 

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**Attorneys for Defendant Accura Bullets,
LLC d/b/a Powerbelt Bullets i/s/h/a
Powerbelt Bullets**

CERTIFICATE OF SERVICE


The undersigned hereby certifies that on the 4rd day of February 2010, a true and accurate copy of the above and foregoing Notice of Removal was served via United States mail, postage prepaid, to the following:

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**Attorneys for Defendant Accura Bullets,
LLC d/b/a Powerbelt Bullets i/s/h/a
Powerbelt Bullets**

EXHIBIT A

IN THE COURT OF COMMON PLEAS, GUERNSEY COUNTY, OHIO

Glen Underwood
4792 Clay Pike Road
Cambridge, Ohio 43725

Plaintiff,

vs.

Connecticut Valley Arms, Inc.
C/O Dudley McGarity
5988 Peachtree Corners East
Norcross, Georgia 30071

and

Blackpowder Products, Inc.
C/O Dudley McGarity
5988 Peachtree Corners East
Norcross, Georgia 30071

and

Cabela's Inc.
C/O Statutory Agent
One Cabela Drive
Sydney, Nebraska 69160

and

Hodgdon Powder Company
C/O Statutory Agent
6231 Robinson Street
Shawnee Mission, Kansas 66202

and

PowerBelt Bullets
C/O Statutory Agent
2316 East Railroad Street
Nampa, Idaho 83687

Case No. 09 PI 103

Judge Ellwood

COMPLAINT

**Jury Demand
Endorsed Hereon**

CLERK OF COURTS
GUERNSEY COUNTY, OHIO
DEC 17 AM 10:22

and

Dikar, S. Coop., Ltd.
C/O Statutory Agent
Urarte Kalea 26,
Poligono Industrial San Lorenzo
20570 Bergara
Gipuzkoa, Spain

and

John Doe Defendants #1-5
Names and Addresses
Unknown to Plaintiff

Defendants.

Now comes Plaintiff Glen Underwood, by and through counsel, and for his causes of action states as follows:

PARTIES:

1. At all times relevant herein, Plaintiff Glen Underwood was a resident of 4792 Clay Pike Road, City of Cambridge, County of Guernsey, State of Ohio.
2. At all times relevant herein, Defendant Connecticut Valley Arms, Inc. (hereinafter "CVA") and Blackpowder Products Inc. (hereinafter "BPI") were corporations or legal entity organized and existing under the laws of the State of Ohio, or some other state of the United States of America, and was authorized to do business in the State of Ohio and/or has regularly conducted business in the State of Ohio. BPI upon information and belief is and was at all times pertinent hereto the corporate successor in interest to CVA, and it conducted its business (designing, developing, importing, marketing, distributing and selling firearms and related products), under the trade name Connecticut Valley

Arms. Its principal place of business was at all time pertinent hereto in Norcross, Georgia.

3. At all times relevant hereto, Defendant Dikar, S. Coop., Ltd. (hereinafter "Dikar") was a foreign corporation with its principal place of business at Urarte Kalea 26, Poligono Industrial San Lorenzo, 20570 Bergara, Gipuzkoa, Spain. Defendant Dikar was at all times pertinent hereto engaged in the business of designing, manufacturing, assembling, distributing, exporting, and selling finished firearms products and components for firearms products to be used by consumers in various countries including the United States, and more specifically, the State of Ohio. Defendant Dikar did at all times pertinent hereto (a) manufacture muzzleloader rifle products pursuant to Defendants BPI and/or CVA designs and manufacturing specifications, including but not limited to the Kodiak 209 Magnum Pivot Block Action .45 caliber muzzleloader, and it did at all times pertinent hereto deliver and provide such muzzleloader rifle products to Defendants BPI and CVA for distribution and sale to consumers in Ohio. Defendant Dikar is subject to service of process pursuant to the Hague Convention.
4. At all times relevant herein, Defendant Cabela's Inc. (hereinafter "Cabela's") was a corporation or legal entity organized and existing under the laws of the State of Ohio, or some other state of the United States of America, and was authorized to do business in the State of Ohio and/or has regularly conducted business in the State of Ohio; and at all times relevant herein was engaged in the business of selling numerous types of products including muzzleloader rifles designed, developed, imported, marketed, distributed, and sold by Defendants CVA and BPI to consumers in numerous states, including Ohio.

Cabela's operates a location at Triadelphia, West Virginia, and its principal place of business is located in Sidney, Nebraska.

5. At all times relevant herein, Defendant Hodgdon Powder Company (hereinafter "Hodgdon") was a corporation or legal entity organized and existing under the laws of the State of Ohio, or some other state of the United States of America, and was authorized to do business in the State of Ohio and/or has regularly conducted business in the State of Ohio.
6. At all times relevant herein, Defendant Powerbelt Bullets (hereinafter "Powerbelt") was a corporation or legal entity organized and existing under the laws of the State of Ohio, or some other state of the United States of America, and was authorized to do business in the State of Ohio and/or has regularly conducted business in the State of Ohio.
7. Plaintiff states that Defendants John Does #1-5 are individuals, partnerships, or corporations organized and existing under the laws of the State of Ohio or some other state of the United States of America or some foreign jurisdiction, and that said Defendants are conducting and/or have regularly conducted business in the State of Ohio.
8. The true names and capacities (whether individual, partnership, corporation or otherwise) of Defendants John Does #1-5 could not be discovered by the Plaintiff at this time and the Plaintiff has sued these unknown Defendants under these fictitious names.
9. When the true names of said Defendants John Does #1-5 have been ascertained, Plaintiff will seek leave to amend this Complaint accordingly.
10. Plaintiff is informed and believes that Defendants John Does #1-5 are legally responsible for events and occurrences that are described in this Complaint and that Defendants John Does #1-5 proximately caused injuries and damages to Plaintiff as set forth herein.

JURISDICTION AND VENUE:

11. Jurisdiction is conferred on this Court by Ohio Rev. Code § 2305.01.
12. Venue is proper in Guernsey County, Ohio by virtue of Rule 3(B)(1), (3), and (6) of the Ohio Rules of Civil Procedure since Defendants resided in, and/or conducted activity which gave rise to the claim for relief in, and/or all or part of the claim for relief arose in, Guernsey County, Ohio.

SERVICE OF PROCESS

13. Service of Process is permitted upon the Defendants by virtue of Ohio Rules of Civil Procedure Rules 4.2(A) and (F).

COMMON FACTUAL ALLEGATIONS

14. The BPI/CVA/Dikar Kodiak 209 Magnum Pivot Block Action .45 caliber muzzleloader rifle, serial number 61-13-104092-04 (hereinafter "Muzzleloader"), was designed, developed, exported, imported, marketed, and placed into the stream of interstate commerce by Defendants BPI, CVA, and Dikar, for sale to and use by consumers like Glen Underwood in numerous states, including Ohio.
15. On or about February 25, 2006, Glen Underwood (hereinafter "Plaintiff") purchased the Muzzleloader from the Defendant Cabela's retail location in Triadelphia, West Virginia.
16. On December 26, 2007, Plaintiff was preparing to shoot the Muzzleloader at targets on his property in the City of Cambridge, County of Guernsey, State of Ohio.
17. Plaintiff loaded the Muzzleloader properly, using .45 caliber bullets (hereinafter "Bullets") manufactured by Defendant Powerbelt and 150 grains of Triple 7 gunpowder, in pellet form, (hereinafter "Gunpowder") manufactured and pre-measured for use in 150 grain rifles by Defendant Hodgdon.

18. When Plaintiff pulled the trigger of the Muzzleloader to take the first shot, the Muzzleloader exploded in his face.
19. Pieces of the wooden stock, barrel, scope, and front half of the receiver were found in the field and on the railing that Plaintiff was shooting from, and at least one piece of glass was found in Plaintiff's face.
20. Plaintiff sustained severe facial damage and began to bleed heavily.
21. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.
22. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe pain, suffering, mental anguish, and loss of enjoyment of life and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

FIRST CAUSE OF ACTION
[Negligence – All Defendants]

23. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.
24. Defendants Cabela's, CVA, BPI, Dikar, Powerbelt, Hodgdon, and/or John Does #1-5 owed a duty of reasonable care to Plaintiff, and were obligated to protect him against the foreseeable risk of harm imposed by the Muzzleloader, Bullets, and Gunpowder, respectively.

25. Defendants breached their duty of care owed to Plaintiff to protect him from an unreasonable risk of harm in that they negligently researched, tested, manufactured, designed, developed, distributed, advertised, marketed, inspected, configured, and/or sold their respective products for subsequent use by the Plaintiff.
26. Defendants negligently failed to warn or alert Plaintiff of the dangers and hazards associated with the use of the said products.
27. Defendants were negligent in that they knew or should have known that the products were unreasonably dangerous and harmful to persons who would use them for the foreseeable and intended purpose for which they had been purchased.
28. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.
29. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe pain, suffering, mental anguish, and loss of enjoyment of life and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

SECOND CAUSE OF ACTION

[Products Liability – All Defendants (R.C. §§ 2307.71 et seq.)]

Strict Liability: Inadequate Warning or Instruction
(R.C. § 2307.76)

30. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

31. Plaintiff states that there was a defect in the products in design and/or construction as defined by Ohio Revised Code §2307.71 et. seq, which were manufactured and/or sold by Defendants.
32. Defendants Cabela's, CVA, BPI, Dikar, Powerbelt, Hodgdon, and/or John Does #1-5, as duly licensed corporations, marketed, researched, tested, configured, developed, distributed, labeled, advertised, inspected, designed, manufactured, sold and/or otherwise introduced into the stream of commerce the Muzzleloader, Bullets, and Gunpowder, respectively, which were being used by Plaintiff during the events described above.
33. Defendants knew, or in the exercise of reasonable care, should have known, about the risk of injury to the Plaintiff, and others like him, from the use of and exposure to the Defendants' products.
34. Defendants failed to provide warnings and instructions that a manufacturer, exercising reasonable care, would have provided concerning the risk to Plaintiff in light of the likelihood that the products would cause harm of the type for which Plaintiff seeks compensation in light of the seriousness of that harm. The lack of said warnings and/or instructions created a danger to the Plaintiff.
35. The products were further defective due to inadequate post-marketing warning or instruction because Defendant knew or, in the exercise of reasonable care, should have known about a risk that is associated with the products and that allegedly caused harm for which the claimant seeks to recover compensatory damages, and the manufacturer failed to provide the warning or instruction that a manufacturer exercising reasonable care would have provided concerning that risk, in light of the likelihood that the products would cause harm of the type for which the claimant seeks to recover compensatory

damages and in light of the likely seriousness of the harm. The lack of said warning and/or instructions created a danger to the Plaintiff.

36. The defects existed at the time the Muzzleloader, Bullets, and Gunpowder left the control of the manufacturers and was introduced into the stream of commerce by Defendants.

37. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.

38. As a direct and proximate result of the Defendants' defective products, Plaintiff has suffered severe pain, suffering, mental anguish and loss of enjoyment of life, and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

Defective Due To Nonconformance With Manufacturer's Representation
(R.C. 2307.77)

39. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

40. The Muzzleloader, Bullets, and Gunpowder were defective due to their failure to conform, when they left the control of Defendant manufacturers CVA, BPI, Dikar, Powerbelt, and Hodgdon, respectively, to a representation made by those Defendant manufacturers.

41. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur

lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.

42. As a direct and proximate result of the Defendants' defective products, Plaintiff has suffered severe pain, suffering, mental anguish and loss of enjoyment of life, and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

Defective Design, Formulation, and/or Manufacture or Construction
(R.C. §§ 2307.74, 2307.75)

43. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.
44. The Muzzleloader, Bullets, and Gunpowder were defectively designed and/or manufactured because they failed to withstand normal and reasonable use by the Plaintiff, and otherwise failed to perform adequately and safely when used in an intended and reasonably foreseeable manner, so as to proximately cause injuries to Plaintiff.
45. The defects existed at the time the products left the control of the manufacturers and were introduced into the stream of commerce by Defendants Cabela's, CVA, BPI, Dikar, Powerbelt, Hodgdon, and/or John Does #1-5, respectively.
46. Specifically, Plaintiff states that the Defendants researched, tested, manufactured, designed, configured, developed, distributed, advertised, marketed, inspected and/or sold the products, and knew or should have known that these products would be used and handled by users without any knowledge of their products' defects and inherent dangers and without any inspection for dangers and defects.
47. Defendants knew, or in the exercise of reasonable diligence should have known, of the risk of injury to the Plaintiff, and others like him, from the use of products.

48. The said products are more dangerous than an ordinary consumer or user would expect when used in an intended and reasonably foreseeable manner.
49. The benefits of the products do not outweigh the risks inherent in their design and configuration.
50. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.
51. As a direct and proximate result of the Defendants' defective products, Plaintiff has suffered severe pain, suffering, mental anguish and loss of enjoyment of life and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

THIRD CAUSE OF ACTION
[Breach of Implied Warranty – All Defendants]

52. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.
53. Defendants Cabela's, CVA, BPI, Dikar, Powerbelt, Hodgdon, and/or John Does #1-5, impliedly warranted that the Muzzleloader, Bullets, and Gunpowder, respectively, were of good and merchantable quality, fit and safe for their ordinary and intended uses without endangering human life or safety and free from design and manufacturing defects.

54. Defendants breached these implied warranties of merchantability, safety and fitness for a particular purpose in that their products were defective, defectively designed, defectively manufactured, and/or dangerous to reasonably foreseeable users like Plaintiff.
55. Plaintiff relied upon the implied warranties and representations of the Defendants regarding their products and, as a result, utilized their products.
56. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of these injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.
57. As a direct and proximate result of the Defendants' combined respective breaches of implied warranties, Plaintiff has suffered severe pain, suffering, mental anguish and loss of enjoyment of life, and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

FOURTH CAUSE OF ACTION
[Breach of Express Warranty – All Defendants]

58. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.
59. Defendants Cabela's, CVA, BPI, Dikar, Powerbelt, Hodgdon, and/or John Does #1-5, expressly warranted that the Muzzleloader, Bullets, and Gunpowder, respectively, were reasonably fit for their intended uses without endangering human safety and free from design or manufacturing defects.

60. Defendants breached this express warranty because their respective products were dangerous and defective for their reasonably foreseeable uses.
61. Plaintiff relied upon the express warranties and representations of Defendants regarding the fitness, safety and durability of the respective products and as a result, Plaintiff agreed to use said products.
62. As a direct and proximate result of the Defendants' negligence, Plaintiff has suffered severe and permanent injuries, including but not limited to loss of eyesight in his right eye, severe scarring, and facial fractures. These injuries have caused Plaintiff to incur lost wages, and medical and hospital expenses. Due to the permanent nature of the injuries, Plaintiff expects the injuries to cause him to incur medical and hospital expenses into the indefinite future.
63. As a direct and proximate result of the Defendants' combined respective breaches of express warranties, Plaintiff has suffered severe pain, suffering, mental anguish and loss of enjoyment of life, and, due to the permanent nature of the injuries, will continue to suffer from severe pain, suffering, mental anguish and loss of enjoyment of life into the indefinite future.

FIFTH CAUSE OF ACTION
[Punitive Damages – All Defendants]

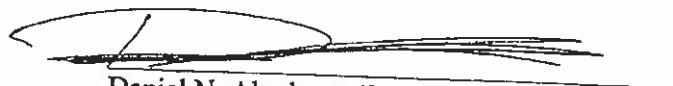
64. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.
65. Defendants Cabela's, CVA, BPI, Dikar, Powerbelt, Hodgdon, and/or John Does #1-5, introduced the Muzzleloader, Bullets, and Gunpowder, respectively, into the stream of commerce with full knowledge of their inherently dangerous and defective design, and with full knowledge of the likelihood of resulting severe injuries to consumers who might

have a problem with the products, thereby entitling Plaintiff to an award of punitive damages.

WHEREFORE, Plaintiff Glen Underwood prays for damages against the Defendants for compensatory, consequential, incidental, special and medical damages in an amount in excess of \$25,000.00, together with interest and costs herein expended.

Respectfully submitted,

COLLEY SHROYER & ABRAHAM CO., L.P.A.



Daniel N. Abraham (0023457)
536 South High Street
Columbus, Ohio 43215
T: (614) 228-6453
F: (614) 228-7122
E: dabraham@csalawfirm.com
Attorney for Plaintiff

JURY DEMAND

Now comes the Plaintiff and demands that the within cause of action be tried by a jury of eight (8).



Daniel N. Abraham (0023457)

EXHIBIT B

IN THE COURT OF COMMON PLEAS
GUERNSEY COUNTY, OHIO

SUMMONS ON COMPLAINT

GLEN UNDERWOOD

VS

Case No. 09PI000703

CONNECTICUT VALLEY ARMS INC et al

TO: POWERBELT BULLETS
2316 E RAILROAD ST
NAMPA, ID 83687

TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned that a Complaint, a copy of which is hereby attached and made a part hereof, has been filed against you in this Court by the Plaintiff(s) named herein.

You are required to serve upon the Plaintiff(s) attorney a copy of your Answer to the Complaint within 28 days after January 7, 2010 which is the date of mailing of this summons to you. Said Answer must be filed with this Court within three (3) days after service on Plaintiff(s) attorney.

The name and address of the Plaintiff(s) attorney is as follows:

Daniel Nolan Abraham
536 South High Street
Columbus, OH 43215

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the Complaint.

Teresa A. Dankovic, Clerk of Courts

Kristina Swank

Kristina Swank, Deputy Clerk

January 7, 2010



EXHIBIT C

09PI000703 UNDERWOOD, GLEN vs. CONNECTICUT VALLEY ARMS INC DAE

File Date	12/17/2009	Case Status	Open	Case Status Date	12/17/2009
		Case Disposition	Undisposed	Case Disposition Date	

Party Information					
Party Name	Party Alias(es)	Party Type	Address #1	Attorney(s)	Attorney Phone
UNDERWOOD, GLEN		Plaintiff	ADDRESS 4792 CLAY PIKE RD CAMBRIDGE Ohio 43725	Abraham, Daniel N	(614)228-6453
CONNECTICUT VALLEY ARMS INC		Defendant	ADDRESS C/O DUDLEY MCGARITY NORCROSS Georgia 30071		
BLACKPOWDER PRODUCTS INC		Defendant	ADDRESS C/O DUDLEY MCGARITY NORCROSS Georgia 30071		
CABELAS INC		Defendant	ADDRESS C/O STATUTORY AGENT SIDNEY Nebraska 69160		
HODGDON POWDER COMPANY		Defendant	ADDRESS C/O STATUTORY AGENT SHAWNEE MISSION Kansas 66202		
POWERBELT BULLETS		Defendant	ADDRESS 2316 E RAILROAD ST NAMPA Idaho 83687		
DIKAR S COOP LTD		Defendant	ADDRESS C/O STATUTORY AGENT GIPUZKOA SPAIN		
JOHN DOE DEFENDANTS #1-5		Defendant	ADDRESS UNKNOWN		

Financial Entries				
Receipt #	Date	Received From	Amount Paid	
18410	12/18/2009	COLLEY SHROYER & ABRAHAM CO LPA	250,00	
		<u>Payment</u>	<u>Fee</u>	
		CHECK	250,00	
			ADMN FEES	62,50
			DEPOSIT	187,50

Docket Entries	
Date	Text
01/25/2010	AGREED EXTENSION TO MOVE OR PLEAD FOR ALL DEFENDANTS. ALL PARTIES AGREE THAT ALL DEFENDANTS MAY HAVE AN EXTENSION TO MOVE OR PLEAD WITHIN 28 DAYS OF THE FILING OF THIS STIPULATION.
01/19/2010	ORDER- UNOPPOSED MOTION FOR EXTENSION OF TIME FOR DEFENDANT HODGDON POWER CO TO HAVE UNTIL 2/15/10 WITHIN WHICH TO ANSWER, MOVE OR OTHERWISE

RESPOND TO PLAINTIFF'S COMPLAINT IS WELL TAKEN AND HEREBY GRANTED BY THE COURT.

01/19/2010 DEFENDANT HODGDON POWDER COMPANY'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO ANSWER, MOVE OR OTHERWISE RESPOND TO PLAINTIFF'S COMPLAINT. Attorney: Janik, Steven George (21934)

01/11/2010 RETURN - CERTIFIED MAIL Method : CIVIL / CERTIFIED MAIL Issued : 12/18/2009 Service : SUMMONS Served : 01/11/2010 Return : 01/11/2010 On : BLACKPOWDER PRODUCTS INC Signed By : JOSE SANDOVAL Reason : SERVICE SUCCESSFUL Comment : SIGNED - NO SERVICE DATE. Tracking #: 71603901984840794354

01/11/2010 RETURN - CERTIFIED MAIL Method : CIVIL / CERTIFIED MAIL Issued : 12/18/2009 Service : SUMMONS Served : 01/11/2010 Return : 01/11/2010 On : CONNECTICUT VALLEY ARMS INC Signed By : JOSE SANDOVOR?? Reason : SERVICE SUCCESSFUL Comment : SIGNED - NO SERVICE DATE. Tracking #: 71603901984840794347

01/07/2010 SUMMONS AND CERTIFIED COPY OF THE COMPLAINT AND INITIAL FILINGS MAILED BY FIRST CLASS MAIL WITH MAILING CERTIFICATE TO: POWERBELT BULLETS

01/07/2010 PRECIPE FOR SERVICE BY ORDINARY MAIL UPON POWERBELT BULLETS FILED BY PLAINTIFF.

12/28/2009 SUMMONS AND CERTIFIED COPY OF THE COMPLAINT AND INITIAL FILINGS ISSUED TO SPECIAL PROCESS SERVER FOR SERVICE UPON:

12/24/2009 FAILURE OF SERVICE NOTICE ISSUED TO DANIEL NOLAN ABRAHAM Method : CIVIL / CERTIFIED MAIL Issued : 12/18/2009 Service : SUMMONS Served : Return : 12/24/2009 On : POWERBELT BULLETS Signed By : Reason : FAILURE OF SERVICE / CERTIFIED MAIL Comment : REFUSED Tracking #: 71603901984840794385

12/24/2009 RETURN - CERTIFIED MAIL Method : CIVIL / CERTIFIED MAIL Issued : 12/18/2009 Service : SUMMONS Served : 12/21/2009 Return : 12/24/2009 On : CABELAS INC Signed By : SUE L7 Reason : SERVICE SUCCESSFUL Comment : Tracking #: 71603901984840794361

12/23/2009 ORDER - UPON MOTION OF PLAINTIFF AND FOR GOOD CAUSE SHOWN THE COURT APPOINTS PROCESS FORWARDING INTERNATIONAL TO SERVE PROCESS ON THE FOREIGN CORPOIRATION NAMED IN PLAINTIFF/S COMPLAINT/M

12/23/2009 MOTION TO APPOINT PROCESS SERVER FILED BY PLAINTIFF W/MEMORANDUM IN SUPPORT. Attorney: Abraham, Daniel Nolan (23457)

12/18/2009 Issue Date: 12/18/2009 Service: SUMMONS Method: CIVIL / CERTIFIED MAIL Cost Per: \$ 9.71 CONNECTICUT VALLEY ARMS INC C/O DUDLEY MCGARITY 5988 PEACHTREE CORNERS EAST NORCROSS, GA 30071 Tracking No: 71603901984840794347 BLACKPOWDER PRODUCTS INC C/O DUDLEY MCGARITY 5988 PEACHTREE CORNERS EAST NORCROSS, GA 30071 Tracking No: 71603901984840794354 CABELAS INC C/O STATUTORY AGENT ONCE CABELA DR SIDNEY, NE 69160 Tracking No: 71603901984840794361 HODGDON POWDER COMPANY C/O STATUTORY AGENT 6231 ROBINSON ST SHAWNEE MISSION, KS 66202 Tracking No: 71603901984840794378 POWERBELT BULLETS C/O STATUTORY AGENT 6231 ROBINSON ST SHAWNEE MISSION, KS 66202 Tracking No: 71603901984840794385

12/17/2009 PRECIPE FOR CERTIFIED MAIL SERVICE FILED/M

12/17/2009 CIVIL DEPOSIT Receipt: 18410 Date: 12/18/2009

12/17/2009 CIVIL (ADMN FEES) Receipt: 18410 Date: 12/18/2009

12/17/2009 COMPLAINT FILED FOR PERSONAL INJURY WITH JURY DEMAND/M