

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
AT LONDON
No. 06-65-DCR

**DOUGLAS WARFIELD
and TIA WARFIELD, his wife**

PLAINTIFFS

vs.

AMENDED COMPLAINT

D. C. 1980, INC.;

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

*Serve: Kentucky Secretary of State
P. O. Box 718
Frankfort, Kentucky 40602-0718*

*Robert Hickey, Registered Agent
2201 Brooke Farm Trail
Dunwoody, Georgia 30338*

BLACKPOWDER PRODUCTS, INC.

*Serve: Kentucky Secretary of State
P. O. Box 718
Frankfort, Kentucky 40602-0718*

*Robert Hickey, Registered Agent
5988 Peachtree Corners East
Norcross, Georgia 30071*

CONNECTICUT VALLEY ARMS, INC.

*Serve: Kentucky Secretary of State
P. O. Box 718
Frankfort, Kentucky 40602-0178*

*Robert Hickey, Registered Agent
5988 Peachtree Corners East
Norcross, Georgia 30071*

AND

DIKAR S. COOP. LTDA.

DEFENDANTS

Serve: *Kentucky Secretary of State
P. O. Box 718
Frankfort, Kentucky 40602-0178*

*Urarte Kalea 26
20570 Bergara, Gipuzkoa
Spain*

*** **

COUNT I

The Parties

Comes the Plaintiffs, Douglas Warfield and Tia Warfield, his wife, by counsel, and for their cause of action herein and state as follows:

1. The Plaintiff, Douglas Warfield, is a citizen and resident of the Commonwealth of Kentucky, his specific address being 48 Warfield Lane, Corbin, Kentucky 40701.
2. The Plaintiff, Tia Warfield, is a citizen and resident of the Commonwealth of Kentucky, her specific address being 48 Warfield Lane, Corbin, Kentucky 40701.
3. The Defendant, D.C. 1980, Inc., is a foreign corporation, incorporated in the state of Georgia, with its principal place of business being at 2201 Brooke Farm Trail, Dunwoody, Georgia 30338. This Defendant has designated as its agent for service of process in the state of Georgia, Robert Hickey, whose address is 2201 Brooke Farm Trail, Dunwoody, Georgia 30338.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Kentucky, but was not authorized to do so and has continuously failed to appoint an agent within this state for service of process. Jurisdiction over this Defendant is established pursuant to KRS 454.210(2). Therefore, in accordance with the referenced statute, the Secretary of State is the statutory agent for service of process on this Defendant.

4. The Defendant, D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc., is a foreign corporation, incorporated in the state of Georgia, with its principal place of business being at 2201 Brooke Farm Trail, Dunwoody, Georgia 30338. This Defendant has designated as its agent for service of process in the state of Georgia, Robert Hickey, whose address is 2201 Brooke Farm Trail, Dunwoody, Georgia 30338.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Kentucky, but was not authorized to do so and has continuously failed to appoint an agent within this state for service of process. Jurisdiction over this Defendant is established pursuant to KRS 454.210(2). Therefore, in accordance with the referenced statute, the Secretary of State is the statutory agent for service of process on this Defendant.

5. The Defendant, Blackpowder Products, Inc., is a foreign corporation, incorporated in the state of Georgia, with its principal place of business being at 5988 Peachtree Corners East, Norcross, Georgia 30071. This Defendant has designated as its agent for service of process in the state of Georgia, Robert Hickey, whose address is 5988 Peachtree Corners East, Norcross, Georgia 30071.

At all times relevant hereto, this Defendant was doing business in the Commonwealth of Kentucky, but was not authorized to do so and has continuously failed to appoint an agent within this state for service of process. Jurisdiction over this Defendant is established pursuant to KRS 454.210(2). Therefore, in accordance with the referenced statute, the Secretary of State is the statutory agent for service of process on this Defendant.

6. The Defendant, Dikar, S. Coop., LTDA., ("Dikar"), is a foreign corporation with its principal place of business being located at Urarte Kalea 26, Poligono Industrial San Lorenzo, 20570 Bergara, Gipuzkoa, Spain. At all times relevant herein, Dikar 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. In addition, Dikar, along with one or several of the other Defendants, was involved in the voluntary recall of inline muzzleloading rifles manufactured in 1995 and 1996. For reasons aforementioned, Dikar was doing business in the Commonwealth of Kentucky, but was not authorized to do so and has continuously failed to appoint an agent within this state for service of process. Jurisdiction over this Defendant is established pursuant to KRS 454.210(2). Dikar has thus appointed the Secretary of State as its statutory agent for service of process. In addition, the United States and Spain are both parties to the Hague Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters, TIAS No. 10072 (U. S. Treaties and other International Acts) and 20 UST 361 (U. S. Treaties and other International Agreements). Service in accordance with this International Treaty is the appropriate method for service of process herein and Dikar will be served pursuant to the requirements of the Hague Convention.

COUNT II

Jurisdiction and Venue

1. Plaintiffs adopt, reaffirm, and reallege each and every allegation contained in Count I of this Complaint.

2. This is a products liability and personal injury action in which Plaintiff, Douglas Warfield, sustained severe and permanent injuries while using a product designed, manufactured, sold, and distributed, by one, several, or all of the named Defendants. That the accident and resulting injuries occurred near Plaintiffs' residence located at 48 Warfield Lane, in Corbin, Whitley County, Kentucky.

3. This action is of a civil nature involving, exclusive of interest and costs, a sum in excess of Seventy Five Thousand Dollars (\$75,000.00). Every issue of law and fact herein is wholly between citizens of different states. As a consequence, jurisdiction is conferred upon this Court pursuant to 28 U.S.C., § 1332.

4. For purposes of all subsequent Counts to this Complaint, Plaintiffs plead that the Defendants, D. C. 1980, Inc., Defendant, D. C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc., Defendant, Blackpowder Products, Inc., Defendant, Connecticut Valley Arms, Inc., and Defendant, Dikar, S. Coop. LTDA, acted individually, and/or jointly and collectively, in the design, manufacture, distribution, and sale of the gun and its various component parts. As a result, in all subsequent Counts to this Complaint, each Defendant herein named shall hereinafter collectively be referred to as "Defendants".

COUNT III

The Facts

1. That Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I and II of this Complaint.
2. That in August 2005, Plaintiff, Douglas Warfield, purchased a gun commonly referred to as a "muzzleloader" which had been designed, manufactured, distributed, and sold by the Defendants. That the gun is marked Connecticut Valley Arms, Inc., and bears identification and/or serial number 61-13-039492-96.
3. That the Plaintiff, Douglas Warfield, was experienced in the loading and firing of this type of gun. That subsequent to acquiring the gun, Plaintiff had shot the weapon on numerous occasions without apparent problems.
4. However, on September 25, 2005, and after properly loading the gun and while attempting to fire the same, the gun misfired and exploded in such a fashion that it caused various component parts of the gun to impact and strike Plaintiff in the right eye, face, and various parts of his head, thereby causing severe and permanent injuries, all of which are more fully set out in Count VII of this Complaint.

5. That the failure of Defendants to properly design, manufacture, warn, inspect, and test its products, including the gun which improperly misfired on September 25, 2005, was a substantial factor in causing the injuries and damages herein complained of.

COUNT IV

Strict Liability

1. Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I, II, and III of this Complaint.

2. That the gun was designed and manufactured, in whole, or in part, by Defendants and was distributed and sold in the United States by said Defendants.

3. That the Defendants marketed, sold, and distributed the gun in a defective condition unreasonably dangerous to the users and consumers thereof.

4. That the Plaintiff, Douglas Warfield, was among the class of individuals who the Defendants should have known would be placed in a position of unreasonable danger by the use of the defective gun.

5. That the defective condition of the gun was a substantial factor in causing the injuries and damages to Plaintiffs, all of which are more fully set out in Count VIII and Count IX of this Complaint.

COUNT V

Negligence

1. That Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I, II, III, and IV of this Complaint.

2. That the Defendants were negligent in the design, manufacture, engineering, inspecting, testing, and in selling and distributing the gun in a defective and dangerous condition. As a result of the failure of the Defendants to use ordinary and reasonable care,

the product was continuously unsafe to those persons, including the Plaintiff herein, who possessed and used the gun.

3. That the negligence herein complained of was a substantial factor in causing the injuries and damages to Plaintiffs, all of which are more fully set out in Count VIII and Count IX of this Complaint.

COUNT VI

Failure to Warn

1. Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I, II, III, IV, and V of this Complaint.

2. That the Defendants either knew or upon the exercise of reasonable care should have known, that the gun and its various component parts were not safe, reliable, or suitable for the use that it was being put to by those persons, including the Plaintiff, Douglas Warfield, who might acquire, possess, and use the referenced product. That these Defendants had full knowledge of the defects in design and manufacture of the gun which imposed on the Defendants a duty to warn the class of individuals who would be placed in a position of unreasonable danger by the use of the gun, including the Plaintiff herein. And yet, the Defendants continuously failed to take necessary and appropriate actions to warn Plaintiff of the dangerous condition of the product and of the dangers associated with its use.

3. That the negligent failure of Defendants to warn about the dangerous conditions existing in the product, and with the use of the product, was a substantial factor in causing the injuries and damages to these Plaintiffs, all being more fully set out in Count VIII and Count IX to this Complaint.

COUNT VII

Breach of Warranties

1. Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I, II, III, IV, V, and VI of this Complaint.

2. The Defendants expressly warranted and impliedly warranted, that the gun and all of its various component parts were safe, merchantable, and fit for the purpose for which it was manufactured and sold, and for the use by the ultimate consumer and user, including the Plaintiff herein.

3. The Defendants breached the aforementioned warranties in that the gun and its various component parts, were unsafe, were not of merchantable quality, and were unfit and dangerous for the particular purpose for which they were intended and therefore, were unfit for sale and/or use by the ultimate consumer and/or user, including the Plaintiff, Douglas Warfield.

4. The breach of one or more of said warranties by Defendants was a substantial factor in causing the injuries and damages to Plaintiffs, all of which are more fully set out in Count VIII and Count IX.

COUNT VIII

Injuries and Damages

1. Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I, II, III, IV, V, VI, and VII of this Complaint.

2. Plaintiff, Douglas Warfield, states that as a direct and proximate result of the wrongful actions and breaches of the Defendants as referred to in Count III through Count VII, that he has suffered severe and permanent injuries to his head and body, including but not limited to, the total loss of vision in his right eye; loss of hearing in his

right ear; multiple fractures to his facial bones, jaw, and skull; total destruction of his temporal mandibular joint; and a brain injury with resulting severe headaches and mental dysfunction. That as a result of the aforementioned injuries, this Plaintiff has had pain and suffering and mental anguish, and will continue to have pain, suffering and mental anguish in the future, and permanently; has incurred medical expenses, including doctor, dental, drug, and hospital bills which are now in excess of \$50,000.00, and in all probability, will have additional medical bills and expenses in the future; has lost wages and his ability to earn money in the future has been permanently impaired; and he has lost the ability and is no longer able to provide the household services that he routinely performed and provided in the past, all to his damage in the sum of Five Million Dollars (\$5,000,000.00).

3. Plaintiff, Douglas Warfield, further states that the actions of the Defendants in the defective design, manufacturing, inspecting, testing, distribution, and sale of the product in an unreasonably dangerous condition; and in the negligence also associated therewith; and in its intentional failure to correct the defects and to warn of the defects and of the hazards resulting from the design and/or manufacture of defective product, and the use of the defective product, and in its failure to take action promptly to correct these said defects, constituted willful, malicious, gross conduct, and gross negligence on behalf of said Defendants, and its actions constituted oppression and malice upon and toward the Plaintiff and the Plaintiff seeks punitive damages against the Defendants in the sum of Five Million Dollars (\$5,000,000.00).

COUNT IX

Damages of Plaintiff, Tia Warfield

1. Plaintiffs adopt, reiterate, and reallege each and every allegation contained in Counts I, II, III, IV, V, VI, VII, and VIII of this Complaint.

2. That as a direct and proximate result of the wrongful actions and breaches of the Defendants, all as aforementioned, and the injuries, disability, and damages caused to Plaintiff, Douglas Warfield, the Plaintiff, Tia Warfield, has lost the affection, comfort, companionship, society, and consortium of her husband, and has had increased burdens placed upon her as a result thereof, all to her damage in the sum of One Million Dollars (\$1,000,000.00).

WHEREFORE, Plaintiffs, Douglas Warfield and Tia Warfield, demand judgment against the Defendants as follows:

(1) That Plaintiff, Douglas Warfield, recover compensatory and general damages in the sum of Five Million Dollars (\$5,000,000.00);

(2) That the Plaintiff, Douglas Warfield, recover punitive damages in the sum of Five Million Dollars (\$5,000,000.00);

(3) That the Plaintiff, Tia Warfield, recover damages for her loss of consortium in the sum of One Million Dollars (\$1,000,000.00);

(4) That Plaintiffs recover their costs herein expended and for all other proper relief to which they may entitled; and

(5) Plaintiffs demand trial by jury.

/s/ A. V. Conway, II

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