

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

WILLIAM BAZZELL and)
TONI BAZZELL, Husband)
and Wife,)
)
Plaintiffs,)

v.)

Case No. 4:07-CV-1104 CAS

DIKAR, S. COOP. LTD.,)
a foreign corporation,)
Serve at:)
Urarte Kalea 26,)
Poligono Industrial San Lorenzo)
20570 Bergara)
Gipuzkoa, Spain)

JURY TRIAL DEMANDED

Mo. E.D. Local Rule 2.04

- and -)

WAL-MART STORES, INC., d/b/a Wal-Mart)
Serve at:)
Reg. Agent: CT Corporation)
120 South Central Ave.)
Clayton, MO 63105)

- and -)

SAM'S WEST, INC., d/b/a Sam's Club)
Serve at:)
Reg. Agent: CT Corporation)
120 South Central Ave.)
Clayton, MO 63105)

- and -)

D.C. 1980, INC.)
Serve at:)
Reg. Agent: Robert Hickey)
2201 Brooke Farm Trail)
Dunwoody, GA 30338)

Defendants.)

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs William Bazzell and Toni Bazzell, Husband and Wife, and state as follows:

I. PARTIES

1. Plaintiffs William Bazzell and Toni Bazzell, were and are at all times relevant hereto husband and wife, and are citizens and residents of Jefferson County, Missouri.

2. Defendant DIKAR, S. COOP., LTD. (“DIKAR”) was at all times relevant hereto 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, 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 Missouri. Defendant DIKAR did at all times pertinent hereto (a) manufacture muzzleloader rifle products pursuant to Defendant DC 1980 design(s) and manufacturing specifications, including but not limited to the Apollo muzzleloader rifle product line, and it did at all times pertinent hereto deliver and provide such muzzleloader rifle products to Defendants DC 1980 for distribution and sale to consumers in the United States. Defendant DIKAR is subject to service of process pursuant to the Hague Convention.

3. Defendant DC 1980, Inc. (“DC 1980”) was at all times pertinent hereto a Georgia corporation engaged in the business of designing, developing, importing,

marketing, distributing and/or selling firearms and related products, including but not limited to muzzleloader rifles in general and the CVA Apollo model in particular. DC 1980, Inc. upon information and belief conducted its business under the trade name Connecticut Valley Arms. Its principal place of business was at all times pertinent hereto in Norcross, Georgia.

4. Defendant, WAL-MART STORES, INC., d/b/a Wal-Mart (“Wal-Mart”), is the parent company of the wholly owned subsidiary, Defendant, SAM’S WEST, INC., d/b/a Sam’s Club (“Sam’s”). Wal-Mart at all times pertinent hereto was an Arkansas corporation engaged in the business of selling numerous types of merchandise including but not limited to muzzleloader rifle products designed, developed, imported, marketed, distributed, and sold by Defendants DIKAR and DC 1980 to consumers in numerous states including Illinois and Missouri.

5. Defendant, SAM’S, at all times pertinent hereto was an Arkansas corporation engaged in the business of selling numerous types of merchandise including but not limited to muzzleloader rifle products designed, developed, imported, marketed, distributed, and sold by Defendants DIKAR and DC 1980 to consumers in numerous states including Illinois and Missouri.

VENUE AND JURISDICTION

6. The defendants, and each of them, offer their products for sale and distribution in the State of Missouri and to a substantial customer base in the State of Missouri and derived substantial benefits from doing business in Missouri. The Defendants maintain minimum contacts with the State of Missouri and are otherwise present in this state so that this Court may exercise jurisdiction over them. Further, the

explosive product failure that occurred to give rise to this case occurred in the State of Missouri.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (a) in that a substantial part of the events giving rise to the claim herein set forth occurred in this judicial district.

8. The Plaintiffs' claims for damages against these Defendants exceed Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interest and thus this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) and there is complete diversity of citizenship of the parties.

GENERAL ALLEGATIONS

9. The DIKAR, DC 1980, CVA Apollo muzzleloader rifle, serial no. 611301369297, was manufactured, assembled, and packaged by Defendant DIKAR in Spain in accordance with and pursuant to designs and specifications of Defendants DIKAR, DC 1980, Wal-Mart, and/or Sam's. Defendant DIKAR exported the DIKAR, DC 1980, CVA Apollo muzzle-loader rifle, serial no. 611301369297, along with other finished muzzleloader rifle products and components to Defendants DC 1980, Wal-Mart, and Sam's for marketing, distribution, and sale in the United States.

10. The DIKAR, DC 1980, CVA Apollo muzzleloader rifle series, including serial no. 611301369297, was designed, developed, imported, marketed, and placed into the stream of interstate commerce by Defendants DIKAR, DC 1980, Wal-Mart, and Sam's for sale to and use by consumers like Plaintiff William Bazzell in numerous states including Illinois and Missouri.

11. Toni Bazzell, wife of Plaintiff William Bazzell, purchased the DIKAR, DC 1980, CVA Apollo muzzleloader rifle, serial no. 611301369297, from a Sam's, and subsequently gave it to her husband as a gift.

12. On November 12, 2006, while hunting deer in Butler County, Missouri, when Plaintiff William Bazzell fired the muzzleloader rifle, serial no. 611301369297, it exploded in the area where the breech plug seats or screws into the barrel. Before firing the muzzleloader rifle, Plaintiff William Bazzell properly loaded it with a charge, placed a bullet against the charge, and placed an ignition primer into the breech plug, all in compliance with the written instructions and recommendations contained in the DIKAR, DC 1980 product materials. When he fired the muzzleloader rifle, it exploded. The force of the explosion caused the breech plug to (a) strip the threads of the barrel and (b) be forcefully ejected backward toward the butt end of the muzzleloader rifle, striking Plaintiff William Bazzell in the head and face. As a direct result of the explosion, other components of the muzzleloader rifle, and fragments of them, were forcefully ejected toward the butt end, and to the sides, of the muzzleloader rifle, also striking him in the head and face, and causing painful and permanently disabling and disfiguring blast injuries to his head and face, right eye, right ear, and nasal passages and sinuses. A spring from the muzzleloader rifle penetrated Bazzell's right cheek and cheekbone, sinuses and lodged in his skull. In addition, Plaintiff William Bazzell's right hand, which was grasping the stock and trigger assembly at the time of the explosion, sustained blast injuries to various bones, ligaments, tendons, muscles, nerves, and skin. After the muzzleloader exploded, and after somehow extracting himself from his deer-stand safety rope, while disoriented, William Bazzell fell from his deer stand to the ground breaking

his back and several ribs and suffering other significant injuries to various soft tissues. These injuries were, and continue to be, painful, disabling, and disfiguring.

13. At the time of the incident of November 12, 2006, Plaintiff William Bazzell was a healthy hard working man with a long life and work expectancy. As a direct result of the above-described incident, he sustained serious, painful, debilitating, and disfiguring injuries to his head and face, right eye, nose, right ear, nasal passages and sinuses, and dominant right hand, including nerve damage and burns to his face. He has undergone numerous surgical procedures. He has incurred medical bills in an amount that has yet to be fully and finally calculated, he is left with permanent injury, disability, and scarring and atrophy to his head and face, likely blindness in his right eye, and he lost nearly all his hearing in his right ear. He has sustained compensable damages and losses in at least the following respects:

- A. Past medical expenses in an amount that has yet to be fully and finally calculated;
- B. Future medical expenses in an amount that has yet to be fully and finally calculated;
- C. Loss of earnings and loss of earning capacity, both past and future;
- D. Physical disability, past and future;
- E. Permanent deformity and disfigurement;
- F. Physical pain, past and future;
- G. Mental pain, past and future;
- H. Loss of quality of life.

COUNT I

STRICT LIABILITY OF DEFENDANTS DIKAR, DC 1980, WAL-MART, AND SAM'S

14. Defendant DIKAR is strictly liable to Plaintiffs because the Apollo muzzleloader rifle, serial no. 611301369297, was defective and unreasonably dangerous due to design, material, and manufacturing defects, including but not limited to defective mechanical design, defective materials specifications, defective manufacturing procedures and specifications, deficient inspection and testing procedures and specifications, and deficient quality control procedures and specifications. Defendant DIKAR is also strictly liable to Plaintiffs because it failed to provide adequate, proper, and reasonable information, instructions, and warnings regarding the maintenance and use of the muzzleloader rifle, including hazards associated with the intended, recommended, and foreseeable use of the muzzleloader rifle product. Defendant DIKAR is strictly liable to Plaintiffs because the afore-mentioned defects were the direct and proximate cause of the incident of November 12, 2006, described above.

15. Defendants DC 1980, Wal-Mart, and Sam's are strictly liable to Plaintiffs because the Apollo muzzleloader rifle, serial no. 611301369297, was defective and unreasonably dangerous due to design, material, manufacturing, and marketing defects, including but not limited to defective mechanical design, defective materials specifications, defective manufacturing procedures and specifications, deficient inspection and testing procedures and specifications, and deficient quality control procedures and specifications. Defendants DC 1980, Wal-Mart, and Sam's are also strictly liable to Plaintiffs because they failed to provide adequate, proper, and reasonable

information, instructions, and warnings regarding the maintenance and use of the muzzleloader rifle, including hazards associated with the intended, recommended, and foreseeable use of the muzzleloader rifle product. Defendants DC 1980, Wal-Mart, and Sams are strictly liable to Plaintiffs because the aforementioned defects were the direct cause of the incident of November 12, 2006, described above.

WHEREFORE, on Count I, Plaintiffs pray for judgment against the defendants and each of them jointly and severally, for such damages as are fair and reasonable, prejudgment interest, and for their costs herein expended.

COUNT II

NEGLIGENCE OF DEFENDANT DIKAR

16. Defendant DIKAR failed to exercise ordinary care, was negligent, and is liable to Plaintiffs for at least the following reasons:

A. it failed to exercise ordinary care with regard to adequate and proper design, material, and manufacturing specifications and processes for the breech plug, barrel, and related component parts of the above described Apollo muzzleloader rifle, serial no. 611301369297;

B. it failed to perform adequate, proper, and reasonable quality control procedures, including inspection and testing, for the above described Apollo muzzleloader rifle, serial no. 611301369297;

C. it failed to exercise ordinary care to provide adequate, proper, and reasonable information, instructions, and warnings regarding the proper use and maintenance of the above described Apollo muzzleloader rifle, serial no. 611301369297, even though it had, or should have had the expertise, knowledge, and means to do so; and

D. Defendant DIKAR failed to exercise ordinary care to correct, modify, and revise the (mechanical configuration and or materials specifications) design of the muzzleloader rifle product line, that it knew or should have known, from a series of numerous, previous, and similar incidents, had explosively failed in the area where the breech plug seats or screws into the

barrel, when put to its intended, recommended, and foreseeable use by consumers like Plaintiff William Bazzell.

E. the incident of November 12, 2006, wherein Plaintiff William Bazzell was injured would not have occurred without negligence on the part of Defendant DIKAR in the design, manufacture, inspection, and testing of the Apollo muzzleloader rifle, serial no. 611301369297; the product was under the control and management of Defendant DIKAR at the time it was negligently designed, manufactured, assembled, packaged, and delivered to Defendant DC 1980; there was no change in the condition of the product after it left the control and management of Defendant DIKAR.

NEGLIGENCE OF DEFENDANTS DC 1980, INC., WAL-MART, AND SAM'S

17. Defendants DC 1980, Wal-Mart, and Sam's failed to exercise ordinary care, were negligent, and are liable to Plaintiffs because:

A. they failed to exercise ordinary care to provide adequate and proper design, material, and manufacturing specifications and processes for the breech plug, barrel, and related component parts of the above described Apollo muzzleloader rifle, serial no. 611301369297;

B. they failed to perform or require performance of adequate, proper, and reasonable quality control procedures, including inspection and testing, for the above described Apollo muzzleloader rifle, serial no. 611301369297;

C. they failed to exercise ordinary care to provide adequate, proper, and reasonable information, instructions, and warnings regarding the proper use and maintenance of the above described Apollo muzzle-loader rifle, serial no. 611301369297, even though it had, or should have had the expertise, knowledge, and means to do so; and

D. Defendants DC 1980, Wal-Mart, and Sam's failed to exercise ordinary care in failing to correct, modify, and revise the (mechanical configuration and or materials specifications) design of the muzzleloader rifle product line, that it knew from a series of numerous, previous, and similar incidents, had explosively failed in the area where the breech plug seats or screws into the barrel, when put to its intended, recommended, and foreseeable use by consumers like Plaintiff William Bazzell.

E. the incident of November 12, 2006, wherein Plaintiff William Bazzell was injured would not have occurred without negligence on the part of Defendants DC 1980, Wal-Mart, and Sam's in the design, manufacture,

marketing, and distribution of the Apollo muzzleloader rifle, serial no. 611301369297; the product was under the control and management of Defendant DC 1980, Wal-Mart, Sam's at the time it was negligently designed, manufactured, marketed, and distributed; there was no change in the condition of the product after it left the control and management of Defendants DC 1980, Wal-Mart, and Sam's.

18. The above-described incident was directly caused by:

A. the defective and unreasonably dangerous Apollo muzzleloader rifle, serial no. 611301369297, which was designed, developed, manufactured, marketed, and placed into the stream of interstate commerce by the combined efforts of Defendants DIKAR, DC 1980, Wal-Mart, and Sam's;

B. the combined negligence of Defendants DIKAR, DC 1980, Wal-Mart, and Sam's in designing, developing, manufacturing, marketing, distributing and placing into the stream of interstate commerce, a muzzleloader rifle product line that they knew was defective and unreasonably dangerous because of its knowledge of numerous, previous, and similar incidents wherein such product had explosively failed when put to its intended, recommended, and foreseeable use,

C. the combined negligence of Defendants DIKAR, DC 1980, Wal-Mart, and Sam's in failing to correct, modify, and revise the design of a muzzleloader rifle product line, that they knew was defective and unreasonably dangerous because of their knowledge of numerous, previous, and similar incidents wherein such product had explosively failed when put to its intended, recommended, and foreseeable use.

WHEREFORE, on Count II, Plaintiffs pray judgment against the defendants and each of them jointly and severally, for such damages as are fair and reasonable, prejudgment interest, and for their costs herein expended.

COUNT III

FAILURE TO WARN

19. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 17 above as paragraph 18 of Count III as if more fully set out herein.

20. The Muzzleloader was unreasonably dangerous when put to its reasonably anticipated use without knowledge of the operator of its dangerous characteristics and its propensity to explode.

21. The defendants did not give adequate warning of the dangerous characteristics of the muzzleloader.

WHEREFORE, on Count III, Plaintiffs pray judgment against the defendants and each of them jointly and severally, for such damages as are fair and reasonable, prejudgment interest, and for their costs herein expended.

COUNT IV

NEGLIGENTLY SUPPLYING DANGEROUS INSTRUMENTALITY

22. Bazzells re-allege and incorporate herein by reference paragraphs 1 through 20 above as paragraph 21 of Count IV as if more fully set out herein.

23. The Muzzleloader was designed in such a manner that it would explode during normal operation.

24. Bazzell was using the muzzleloader in a reasonably expected and foreseeable manner.

25. The defendants and each of them had no reason to believe that those for whose use the Muzzleloader was supplied would realize its dangerous condition.

26. The defendants and each of them knew or had information from which it, in the exercise of ordinary care, should have known of such dangerous condition.

27. The defendants and each of them failed to adequately warn of the dangerous conditions of the muzzleloader.

WHEREFORE, on Count IV, Plaintiffs pray judgment against the defendants and each of them jointly and severally, for such damages as are fair and reasonable, prejudgment interest, and for their costs herein expended.

COUNT V

PLAINTIFF TONI BAZZELL'S DAMAGES FOR LOSS OF SPOUSAL CONSORTIUM AND SERVICES

28. Plaintiffs William Bazzell and Toni Bazzell were married on January 24, 1992, in the state of Missouri. Since that time, they have lived together as husband and wife. As a direct result of the incident of November 12, 2006, and the injuries suffered therein by Plaintiff William Bazzell, Plaintiff Toni Bazzell has sustained compensable damages for loss of spousal consortium and services.

WHEREFORE, on Count V, the Plaintiff prays for judgment against the defendants and each of them jointly and severally, for such damages as are fair and reasonable, prejudgment interest, and for their costs herein expended.

COUNT VI

PUNITIVE DAMAGES

29. Plaintiffs re-allege and incorporate herein by reference paragraphs 1 through 28 above as paragraph 29 of Count VI as if more fully set out herein.

30. The defendants failed to adequately select materials for, design and construct the muzzleloader so as to avoid life threatening explosions and continued to manufacture the muzzleloader after the design defects became apparent.

31. The aforesaid misconduct of the defendants constituted a gross indifference and a willful, wanton, reckless or conscious disregard for the safety of muzzleloader

owners and users, including William Bazzell, and the Bazzells are thereby entitled to exemplary and punitive damages against them.

Wherefore, Plaintiffs William Bazzell and Toni Bazzell, and each of them, pray for judgment against Defendants DIKAR, DC 1980, Wal-Mart, and Sam's, and each of them, jointly and severally, in a sum in excess of \$75,000.00, the exact amount of which shall be determined by a jury. Plaintiffs also pray for judgment against Defendants, and each of them, for taxable costs, prejudgment and postjudgment interest, and all other relief to which they may be entitled.

Date: January 9, 2008

/s/ Morry S. Cole
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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2008, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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I hereby certify that on January 9, 2008, the foregoing was served upon the parties by first-class mail by the United States Postal Service to the following non-participants in Electronic Case Filing:

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