

FILED COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

CHRISTOPHER M. BUSCHELMAN : CASE NO. CV97-01-0255  
Plaintiff : (Judge Anthony Valen)  
vs. : PLAINTIFF'S PRETRIAL  
STATEMENT  
WAL-MART, INC., et al., :  
Defendants. :

Now comes plaintiff, Christopher Buschelman, by and through counsel, and, pursuant to this Court's Order of June 22, 1998, hereby submits the following pretrial statement:

A. THE ISSUES OF FACT AND LAW.

1. Is Connecticut Valley Arms, Inc. a manufacturer under Ohio products liability law?
2. Did the Plaintiff assume the risk of any injury he may have sustained?
3. What is the extent of the Plaintiff's injuries and/or damages?
4. Is the fact that the product was recalled inadmissible under the evidentiary rule of subsequent remedial measure?
5. Are other "similar acts" admissible under the circumstances of this case?
6. Has Defendant Connecticut Valley Arms, Inc., the distributor, or Defendant Wal-Mart, Inc., the retailer, made or breached any expressed or implied warranties with respect to the firearm as issue?
7. Did Defendant Connecticut Valley Arms, Inc. or Wal-Mart, Inc. know or should they have known at the time of

distribution or sale that the firearm as issue was in a defective condition, unreasonably dangerous to the Plaintiff?

B. AN ITEMIZATION OF EXPENSES AND SPECIAL DAMAGES, INCLUDING THE LOSS OF EARNINGS.

MEDICAL EXPENSES

Ft. Hamilton Hughes Hospital	12/23/96 ; 12/27/96	\$1,875.33
Emergency Associates, Inc.	12/23/96	255.85
Haw T. Han, M.D.	12/23/96	875.00
Daniel C. Love, M.D.	12/23/96-4/24/97	442.00
Michael G. Leadbetter, M.D.	12/2/97-1/20/98	171.00
	<b>TOTAL</b>	<b>\$3,619.18</b>

C. REQUEST TO AMEND THE PLEADINGS.

None.

D. DESCRIPTION OF EXHIBITS TO BE INTRODUCED AT THE TRIAL.

1. Medical records from Fort Hamilton Hughes Hospital for treatment received 12/23/96; 12/27/96.

2. Medical records from Houw T. Han, M.D. for treatment received from 12/23/96 through 01/13/97.

3. Medical records from Daniel C. Love, M.D. for treatment received from 12/23/96 through 04/24/97.

4. All other medical records of the Plaintiff.

5. Exemplar, muzzle-loader and packaging of the firearm at issue.

6. Remaining parts of the muzzle-loader used by plaintiff when he was injured.

7. Powder, slugs and other firing materials used by plaintiff before the muzzle-loader malfunctioned.

8. Testing results and documentation from the plaintiff's expert witness evaluation of the subject muzzel-loader.

9. Warranty for the firearm at issue.

10. Owner's manual for the firearm at issue.

11. Documentation identifying other instances of malfunctioning of the same type muzzel-loader.

Plaintiff reserves the right to introduce any exhibits offered to be introduced by the Defendants in their pretrial statement.

E. NAMES, ADDRESSES AND AVAILABILITY OF ALL WITNESSES.

1. Earl Buschelman, 1120 Davis Road, Hamilton, Ohio.

Mr. Buschelman will testify regarding the events he observed on the date plaintiff was injured and how plaintiff was affected by the injury.

2. Dr. Daniel C. Love, Tri-State Eye Care, 1017 Main Street, hamilton, Ohio 45013. He will testify regarding plaintiff's injury and medical care.

3. Dr. Hauw Han, 7593 Tylers Place Blvd, suite 104, West Chester, Ohio. He will testify regarding plaintiff's injury and medical care.

4. Michael Leadbetter, M.D., The Plastic Surgery Group, Inc., 10506 Montgomery Road, Cincinnati, Ohio 45242. He will testify regarding plaintiff's injury and medical care.

5. Lucien C. Haag, 38643 North Boulder View Drive, Scottsdale, Arizona 85262. He will testify regarding the design, manufacture, use, malfunction, cause of malfunction and

result of malfunction of the subject muzzel-loader. He will also testify as to the same matters regarding other similar muzzel-loaders which have malfunctioned.

6. Robert Hickey, President, Connecticut Valley Arms, Inc., P.O. Box 7222, Norcross, Georgia 30091, as if on cross-examination, regarding the manufacture, marketing, sale and distribution of the subject muzzel-loader.

7. Randy Jernigan, Connecticut Valley Arms, Inc., P.O. Box 7222, Norcross, Georgia 30091, as if on cross-examination, regarding the warranties issued as to the subject muzzel-loader.

8. Plaintiff reserves the right to call any witnesses offered or called by the Defendants.

F. A SUMMARY OF ALL REPORTS OF YOUR EXPERT WITNESSES.

Neither Plaintiff nor Defendants have identified an expert witness.

G. YOUR DEMAND OF ADMISSION OF FACTS AND EXHIBITS INTO EVIDENCE.

There has been some discussion with regard to a stipulation as to defendant Wal-Mart's involvement in the sale of the subject muzzel-loader to plaintiff.

H. ASSURANCE OF YOUR COMPLIANCE WITH AND USE OF O.C.R. 26-36.

Plaintiff has complied with Ohio Civil Rules 26 through 36 to the best of his ability.

I. YOUR REQUEST OF IMPOSITION OF SANCTIONS UNDER O.C.R. 37.

None.

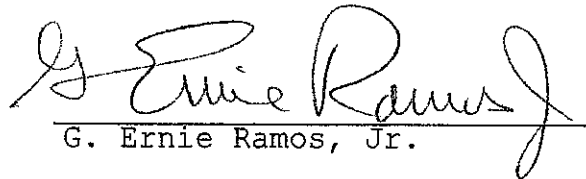
Respectfully submitted,



G. Ernie Ramos, Jr.  
Ohio Reg. #0016709  
Attorney for Plaintiff  
2115 Luray Avenue  
Cincinnati, Ohio 45206  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Plaintiff's Pretrial Statement was delivered or caused to be delivered to David C. Greer, Esq. and James H. Greer, Esq., Attorneys for Defendants Connecticut Valley Arms and Wal-Mart, Inc., BIESER, GREER & LANDIS LLP, Of Counsel, 400 National City Center, 6 North Main Street, Dayton, Ohio 45402-1908, on this 22nd day of December, 1998.



G. Ernie Ramos, Jr.

#400 orig. rec  
12/17/98

Court of Common Pleas Court  
BUTLER COUNTY, OHIO

DEC 15 1998

CLERK OF COURTS

**COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO**

<b>CHRISTOPHER M. BUSCHELMAN,</b>	:	<b>CASE NO. CV97-01-0255</b>
	:	(Judge Anthony Valen)
Plaintiff,	:	
	:	
v.	:	<b><u>DEFENDANTS' PRETRIAL</u></b>
	:	<b><u>STATEMENT</u></b>
<b>WAL-MART, INC. and</b>	:	
<b>CONNECTICUT VALLEY ARMS,</b>	:	
<b>INC.</b>	:	
	:	
Defendants.	:	

Now come the Defendants, Wal-Mart, Inc. and Connecticut Valley Arms, Inc., by and through counsel, and pursuant to this Court's Order of June 22, 1998, hereby submit the following pretrial statement:

**A. THE ISSUES OF FACT AND LAW.**

1. Is there any pass-through liability for either Defendant Connecticut Valley Arms, Inc. or Defendant Wal-Mart, Inc. in this matter?
2. Is Connecticut Valley Arms, Inc. a manufacturer under Ohio products liability law?
3. Did the Plaintiff assume the risk of any injury he may have sustained?
4. Did the Plaintiff misuse the firearm at issue?

5. Are the Defendants Connecticut Valley Arms, Inc. and Wal-Mart, Inc. immune from liability by the intervening and superseding acts of others?

6. Is the Plaintiff comparatively negligent?

7. What is the extent of the Plaintiff's injuries and/or damages?

8. Did the Plaintiff fail to mitigate his alleged damages?

9. Is the fact that the product was recalled inadmissible under the evidentiary rule of subsequent remedial measures?

10. Are other "similar acts" admissible under the circumstances of this case?

11. Has Defendant Connecticut Valley Arms, Inc., the distributor, or Defendant Wal-Mart, Inc., the retailer, made or breached any expressed or implied warranties with respect to the firearm at issue?

12. Did Defendant Connecticut Valley Arms, Inc. or Wal-Mart, Inc. know or should they have known at the time of distribution or sale that the firearm at issue was in a defective condition, unreasonably dangerous to the Plaintiff?

B. AN ITEMIZATION OF EXPENSES AND SPECIAL DAMAGES, INCLUDING THE LOSS OF EARNINGS.

To date, the only information received from the Plaintiff concerning special damages was a summary of such expenses received on August 11, 1997 totaling medical expenses as of June 17, 1997 at \$3,403.18. Defendants have received no information from the Plaintiff concerning loss of earnings.

C. REQUEST TO AMEND THE PLEADINGS.

None.

D. DESCRIPTION OF EXHIBITS TO BE INTRODUCED AT THE TRIAL.

1. Medical records from Fort Hamilton Hughes Hospital for treatment received 12/23/96; 12/27/96.
2. Medical records from Houw T. Han, M.D. for treatment received from 12/23/96 through 1/13/97.
3. Medical records from Daniel C. Love, M.D. for treatment received from 12/23/96 through 4/24/97.
4. All other medical records of the Plaintiff.
5. Exemplar, muzzle loader and packaging of the firearm at issue.
6. Agreement to Express the Intention of CVA and Dikar.
7. 1990 Dikar strategic plan.
8. 1993 LKS marketing plan.
9. 1994 LKS marketing plan.
10. Warranty for the firearm at issue.
11. Owner's manual for the firearm at issue.
12. Safety glasses.
13. ANSI standard Z87-1 (1989).
14. Anonymous letter from unidentified party questioning the veracity of Plaintiff's allegations and claimed damages.

Defendants reserve the right to introduce any exhibits offered to be introduced by the Plaintiff in his pretrial statement.



E. NAMES, ADDRESSES AND AVAILABILITY OF ALL WITNESSES.

1. Robert Hickey, President, Connecticut Valley Arms, Inc., P.O. Box 7222, Norcross, Georgia 30091. Mr. Hickey will testify to the relationship of Defendant Connecticut Valley Arms and the manufacturer of the firearm at issue, Dikar, S. Coop., Ltda. Mr. Hickey will be prepared to testify to all issues presented in this case.

2. William J. Burchey, Ph.D., 509 Tone Highway, Port Deposit, Maryland 21704. Dr. Burchey will testify to the need for appropriate safety goggles and protective clothing when discharging the firearm at issue.

3. Randy Jernigan, Connecticut Valley Arms, Inc., P.O. Box 7222, Norcross, Georgia 30091. Mr. Jernigan is the quality control manager and warranty department supervisor for Defendant Connecticut Valley Arms, Inc. Mr. Jernigan will testify to the manufacturing process of the firearm at issue and the warranty issued with each firearm.

4. Unidentified anonymous witness, address unknown. Defense counsel has been contacted by an unidentified/anonymous witness who passed on information questioning the veracity of the Plaintiff's allegations and damages. Defense counsel is attempting to determine the identity of this unidentified/anonymous witness and will formally identify his name and address if the investigation is successfully completed.

5. Defendants reserve the right to call the Plaintiff as on cross examination.

6. Defendants reserve the right to call any witnesses offered or called by the Plaintiff.

7. Defendants reserve the right to call the Plaintiff's treating physicians.

F. A SUMMARY OF ALL REPORTS OF YOUR EXPERT WITNESSES.

Neither Plaintiff nor Defendants have identified an expert witness.

G. YOUR DEMAND OF ADMISSION OF FACTS AND EXHIBITS INTO EVIDENCE.

None.

H. ASSURANCE OF YOUR COMPLIANCE WITH AND USE OF O.C.R. 26-36.

Defendants have complied with Ohio Civil Rules 26 through 36 to the best of their ability.

I. YOUR REQUEST OF IMPOSITION OF SANCTIONS UNDER O.C.R. 37.

None.

Respectfully submitted,



David C. Greer, Trial Attorney, #0009090  
James H. Greer, Trial Attorney, #0046555  
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Valley Arms and Wal-Mart, Inc.

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Bovis, Kyle & Burch, LLC  
Third Floor  
53 Perimeter Center East  
Atlanta, Georgia 30346-2298

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Defendants' Pretrial Statement was sent via regular US mail to the following this 15<sup>th</sup> day of December, 1998.

G. Ernie Ramos, Jr.  
2115 Luray Avenue  
Cincinnati, Ohio 45206

BIESER, GREER & LANDIS LLP

By:  \_\_\_\_\_