

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Address: 1437 Bannock St. Denver, CO 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: Aug 30 2007 3:55PM MDT Filing ID: 16150198 Review Clerk: Shelly Westman
<b>Plaintiff: DEL L. CREASON</b>  <b>Defendants: CONNECTICUT VALLEY ARMS, INC.; D.C. 1980, INC., f/k/a CONNECTICUT VALLEY ARMS, INC.; BLACKPOWDER PRODUCTS, INC.; DIKAR, S. COOP., LTDA</b>	
Attorney or Party Without Attorney: Name: Michael O'B. Keating Address: Fogel Keating Wagner Polidori & Shafner, P.C. 1290 Broadway, Suite 600 Denver, CO 80203 Phone No.: (303) 534-0401 Fax No.: (303) 534-8333 Atty Reg. No.: #33002	Case Number: Div:            Ct:
<b>COMPLAINT AND JURY DEMAND</b>	

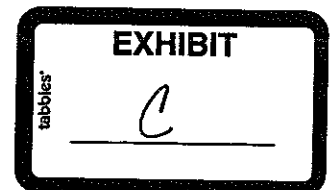
Plaintiff, Del L. Creason, by and through his attorney, Michael O'B. Keating of the law firm of Fogel, Keating, Wagner, Polidori and Shafner, P.C., hereby submits his Complaint and Jury Demand against the Defendants and alleges as follows:

**GENERAL ALLEGATIONS**

1. Defendant, Connecticut Valley Arms, Inc., (hereinafter "CVA") is a foreign corporation with its principal place of business in Georgia. At all relevant times herein, it was engaged in the business of designing, manufacturing, assembling, producing, fabricating, and constructing firearms, including but not limited to the Pro Hunter in-line muzzle-loader rifle product line, for use throughout the United States including the State of Colorado.

2. At all relevant times herein, Defendant CVA, was engaged in the business of marketing, importing, distributing and selling muzzle-loading rifles for use throughout the United States including the State of Colorado.

3. Defendant, D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc., (hereinafter



"D.C.1980") is a foreign corporation with its principal place of business in Georgia. At all relevant times herein, D C. 1980 was engaged in the business of designing, manufacturing, assembling, producing, fabricating, and constructing firearms, including but not limited to the Pro Hunter in-line muzzle-loader rifle product line, for use throughout the United States including the State of Colorado

4. At all relevant times herein, Defendant D.C. 1980 was engaged in the business of marketing, importing, distributing and selling muzzle-loading rifles for use throughout the United States including the State of Colorado.

5. Defendant, Blackpowder Products, Inc., is a foreign corporation with its principal place of business in Georgia. At all relevant times herein, it was engaged in the business of designing, manufacturing, assembling, producing, fabricating, and constructing firearms, including but not limited to the Pro Hunter in-line muzzle-loader rifle product line, for use throughout the United States including the State of Colorado.

6. At all relevant times herein, Defendant Blackpowder Products, Inc , was engaged in the business of marketing, importing, distributing and selling muzzle-loading rifles for use throughout the United States including the State of Colorado.

7. Defendant Dikar S. Coop, LTDA. (hereinafter "Dikar") is a foreign corporation with its principal place of business located in Bergara, Spain. At all times relevant herein, Defendant Dikar was engaged in the business of assembling, fabricating, distributing, manufacturing, constructing, designing and selling firearms, in particular, muzzle-loading rifles, rifle barrels and supplying component parts for the design, assembly, construction, fabrication of muzzle loading rifles for use throughout the United States including the State of Colorado.

8. At all times relevant herein, Defendant Dikar purposefully availed itself of the privilege of conducting business in the United States, including the State of Colorado.

9. It was both predicable and foreseeable that Defendant Dikar's muzzle-loading rifles, rifle barrels, and component parts would be used in the United States, including the State of Colorado.

10. At all times relevant herein, Dikar entered into an agreement with CVA making CVA the sole distributor of Dikar sporting products, including the CVA product line "Pro Hunter" .50 caliber in-line muzzle-loader in the United States. Dikar knew that its muzzle loading rifles and component parts would be distributed to every state in the United States. Pursuant to this agreement Dikar exported its sporting products, including the CVA product line "Pro Hunter" .50 caliber in-line muzzle-loader, from Spain to the United States for sale and distribution in the United States by CVA.

11. In its agreement with CVA, Dikar did not limit CVA's authority to market, sell or distribute its sporting products, including the CVA product line "Pro Hunter" .50 caliber in-line muzzle-loader to specific regions, locations or states in the United States, but rather, allowed CVA and its successor companies to market, sell and distribute sporting products throughout the United States, including the State of Colorado.

12. Dikar's business strategy has been to promote a business venture in the United States on the basis of close collaboration with Defendant CVA. In a March 1993 Strategic Plan prepared by or for Dikar a stated specific goal was to "increase our [Dikar's] share of the American market from 22 to 25 percent." Dikar has made a business decision to have its firearm products marked, sold and distributed in the United States, including within the State of Colorado.

13. In the course of its collaboration with CVA, Dikar has received two United States patents related to firearms and continues to make its products available for purchase in all states in the Union and on the internet.

14. In a court pleading, Blackpowder Products, Inc., has stated that "*100 percent of Defendant Blackpowder, Inc.'s stock is owned by Dikar S. Coop LTDA, a foreign cooperative located in the country of Spain.*" See Exhibit 1.

15. At least four Courts have determined that American Courts have personal jurisdiction over Defendant Dikar. See Exhibit 2, *Edwards v Connecticut Valley Arms, et al.*, 6:02-CV-428-KKC (E.D. Ky. Oct. 27, 2003); *Haymaker v Connecticut Valley Arms, et al.*, No. 97-28 (E.D. Ky. Feb. 17, 1999); *Neal v Connecticut Valley Arms, et al.*, No. 01-02 (E.D. Ky. Jul. 25, 2001); and, *Embry v Connecticut Valley Arms, et al.* 1:03 CV-190-R (W.D. Ky. Oct. 22, 2003).

16. Defendants were involved in the voluntary recall of in-line muzzle-loading rifles manufactured in 1995 and 1996. See Exhibit 3.

17. Plaintiff Del L. Creason is a resident of Colorado.

18. Connecticut Valley Arms, Inc., Pro Hunter muzzle loaded rifle ID No. 61-13-029934-96 was manufactured, assembled, and packaged in Spain by Dikar in accordance with and pursuant to design and specifications of defendants CVA, Blackpowder and/or D.C. 1980. Defendant Dikar exported the Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96, along with other finished muzzle-loader rifle products and components to defendants, CVA, Blackpowder and/or D.C. 1980.

19 The Pro Hunter muzzle-loader rifle series, including serial no. 61-13-029934-96, was designed, developed, imported, marketed and placed into the stream of interstate commerce by defendants for sale to and use by consumers like Plaintiff Del L. Creason in numerous states including Colorado.

20. Plaintiff, Del L. Creason, purchased the Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96, from a Wal-Mart located in Colorado.

21. On or about August 6, 1996, CVA employees inspected the Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96 to insure that it met CVA's manufacturing standards

22. On September 5, 2005, Plaintiff was target shooting with his son, Brandon Creason, in Fort Morgan, Colorado, using his Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96.

23. Suddenly and unexpectedly, after properly loading the gun and while attempting to fire the same, the gun misfired and exploded, causing various parts and materials of the gun to impact and strike Plaintiff in the face and on various parts of his head, causing severe and permanent injuries.

24. Plaintiff was experienced in loading and firing this type of firearm. Prior to loading and firing his Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96, on September 5, 2005, Plaintiff had used the weapon as instructed on numerous occasions without apparent problems or difficulties.

25. Prior to the product failure, Plaintiff's son, Brandon Creason, had used the firearm on September 5, 2005, as instructed, without any apparent problems.

26. Neither Plaintiff or his son, nor anybody else, engaged in any alteration of the Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96 from the time it was purchased until the time of the incident on September 5, 2005.

27. Neither Plaintiff, his son, nor anybody else, were involved in any abnormal or improper use of the Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96 from the time it was purchased until the time it malfunctioned on September 5, 2005.

28. Blackpowder, or Pyrodex, is a highly flammable, explosive and dangerous accelerant, and when used to propel a bullet down the barrel of an in-line muzzle-loader, such as the one used by Plaintiff, it must be contained within a properly designed, adequately tested and manufactured rifle barrel.

29 When properly designed, tested, and manufactured a rifle barrel should contain the explosive gasses caused by the firing mechanism of the rifle and propel the bullet away from the user and out the end of the barrel. In such a properly designed, tested and manufactured rifle barrel, explosive gasses should not cause the bolt, cocking handle, breech cap or any other part of the firearm to be propelled towards the rifle user while the rifle is being used in a foreseeable manner.

30 As a result of the explosion from the Pro Hunter muzzle-loader rifle, serial no. 61-13-029934-96, as previously described, Plaintiff suffered injuries to his head and face.

31 The terms "defendant" and "defendants" as used herein include the employees, agents, representatives, officers, and any other persons under the supervision and or control of the named defendants, as well as their predecessors and successors in interest.

**FIRST CLAIM FOR RELIEF**

(Strict Liability - Defendant Connecticut Valley Arms, Inc.)

32 Plaintiff incorporates as fully set forth herein paragraphs 1 through 31 of Plaintiff's general allegations

33 CVA was the manufacturer of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 and was engaged in the business of designing, developing, testing, manufacturing and selling the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. At the time defendant CVA sold the firearm, it was defective and, because of those defects, it was unreasonably dangerous for the person who might reasonably be expected to use or be affected by the gun.

34 The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective at the time it was sold by CVA and left its control

35 The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was expected to reach the user or consumer without substantial change in condition in which it was sold and did in fact reach users and consumers without substantial change in the condition in which it was sold.

36 Plaintiff Del Creason was a person who would reasonably be expected to use or be affected by the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

37 The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because it created a risk of harm to persons which would not ordinarily be expected and which is not outweighed by the benefits to be achieved by its design.

38. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because adequate warnings and instructions for the safe use of the firearm did not alert the consumer or user to the fact that even if the instructions were followed, the firearm could be unsafe.

39. As a direct and approximate result and consequence of the conduct of the defendant CVA and the defective and unreasonably dangerous nature of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96, plaintiff Del Creason suffered physical, psychological and emotional injuries; permanent disfigurement and function impairment; pain and suffering; loss of quality of life; and has incurred hospital, medical, rehabilitative, as well as the loss of income and loss of earning capacity. Plaintiff Del Creason will continue to incur these losses in the future.

**SECOND CLAIM FOR RELIEF**

(Strict Liability - Defendant Dikar, S. Coop, LTDA)

40. Plaintiff incorporates as fully set forth herein paragraphs 1 through 39.

41. Defendant Dikar was the manufacturer of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 and was engaged in the business of designing, developing, testing, manufacturing and selling the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. At the time defendant Dikar sold the firearm, it was defective, and because of those defects, it was unreasonably dangerous for the person who might reasonably be expected to use or be affected by the gun.

42. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective at the time it was sold by defendant Dikar and left its control.

43. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was expected to reach the user or consumer without substantial change in condition in which it was sold and did in fact reach users and consumers without substantial change in the condition in which it was sold.

44. Plaintiff Del Creason was a person who would reasonably be expected to use or be affected by the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

45. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because it created a risk of harm to persons which would not ordinarily be expected and which is not outweighed by the benefits to be achieved by its design.



46. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because adequate warnings and instructions for the safe use of the firearm did not alert the consumer or user to the fact that even if the instructions were followed the firearm could be unsafe.

47. As a direct and approximate result and consequence of the conduct of defendant Dikar, and the defective and unreasonably dangerous nature of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96, Plaintiff Del Creason suffered physical, psychological and emotional injuries; permanent disfigurement and function impairment; pain and suffering; loss of quality of life; and has incurred hospital, medical, rehabilitative, as well as the loss of income and loss of earning capacity. Plaintiff Del Creason will continue to incur these losses in the future.

### **THIRD CLAIM FOR RELIEF**

(Strict Liability - Defendant Blackpowder Products, Inc.)

48. Plaintiff incorporates as fully set forth herein paragraphs 1 through 47.

49. Defendant Blackpowder Products was the manufacturer of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 and was engaged in the business of designing, developing, testing, manufacturing and selling the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. At the time defendant Blackpowder Products sold the firearm, it was defective and, because of those defects, it was unreasonably dangerous for the person who might reasonably be expected to use or be affected by the gun.

50. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective at the time it was sold by defendant Blackpowder Products and left its control.

51. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was expected to reach the user or consumer without substantial change in condition in which it was sold and did in fact reach users and consumers without substantial change in the condition in which it was sold.

52. Plaintiff Del Creason was a person who would reasonably be expected to use or be affected by the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

53. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because it created a risk of harm to persons which would not ordinarily be expected and which is not outweighed by the benefits to be achieved by its design.

54. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because adequate warnings and instructions for the safe use of the

firearm did not alert the consumer or user to the fact that even if the instructions were followed, the firearm could be unsafe.

55 As a direct and approximate result and consequence of the conduct of defendant Blackpowder Products and the defective and unreasonably dangerous nature of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96, Plaintiff Del Creason suffered physical, psychological and emotional injuries; permanent disfigurement and function impairment; pain and suffering; loss of quality of life; and has incurred hospital, medical, rehabilitative, as well as the loss of income and loss of earning capacity. Plaintiff Del Creason will continue to incur these losses in the future.

**FOURTH CLAIM FOR RELIEF**

(Strict Liability - Defendant D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc.)

56. Plaintiff incorporates as fully set forth herein paragraphs 1 through 55.

57. Defendant D.C. 1980 was the manufacturer of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 and was engaged in the business of designing, developing, testing, manufacturing and selling the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. At the time defendant D.C. 1980 sold the firearm, it was defective and, because of those defects, it was unreasonably dangerous for the person who might reasonably be expected to use or be affected by the gun.

58. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective at the time it was sold by Defendant D.C. 1980 and left its control.

59. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was expected to reach the user or consumer without substantial change in condition in which it was sold and did in fact reach users and consumers without substantial change in the condition in which it was sold.

60. Plaintiff Del Creason was a person who would reasonably be expected to use or be affected by the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

61. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because it created a risk of harm to persons which would not ordinarily be expected and which is not outweighed by the benefits to be achieved by its design.

62. The Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 was defective and unreasonably dangerous because adequate warnings and instructions for the safe use of the



firearm did not alert the consumer or user to the fact that even if the instructions were followed the firearm could be unsafe.

63. As a direct and approximate result and consequence of the conduct of defendant D.C 1980 and the defective and unreasonably dangerous nature of the Pro Hunter muzzle-loader rifle serial no 61-13-029934-96, Plaintiff Del Creason suffered physical, psychological and emotional injuries; permanent disfigurement and function impairment; pain and suffering; loss of quality of life; and has incurred hospital, medical, rehabilitative, as well as the loss of income and loss of earning capacity. Plaintiff Del Creason will continue to incur these losses in the future.

#### **FIFTH CLAIM FOR RELIEF**

(Negligence - Direct and Vicarious Liability - Defendant Dikar, S. Coop, LTDA)

64. Plaintiff incorporates as fully set forth herein paragraphs 1 through 63 of Plaintiff's general allegations

65. Defendant Dikar was negligent in failing to exercise reasonable care to prevent the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 from creating an unreasonable risk of harm to persons who might reasonably be expected to use or be affected the firearm while it was being used in a manner which Defendant Dikar might reasonably have expected.

66. Defendant Dikar was negligent in failing to exercise reasonable care to warn users of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 of the risk of harm associated with the foreseeable use of the weapon.

67. The negligence of Defendant Dikar also includes vicarious liability for the negligence of its employees, agents and representatives, under its supervision and control who are acting in the course and scope of their employment.

68. Defendant Dikar was negligent in failing to reasonably and carefully design, test and manufacture the Pro Hunter muzzle-loader rifle serial no 61-13-029934-96. Defendant failed to exercise ordinary care to provide an adequate and proper mechanical design, materials and manufacturing specifications and processes for the breech plug, barrel, and related component parts of Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to perform or require performance of adequate, proper and reasonable quality control procedures including inspection and testing of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

69. As a direct and proximate result and consequence of the negligence of defendant Dikar, plaintiff Del Creason has suffered injuries, damages and losses as more fully set forth herein.

**SIXTH CLAIM FOR RELIEF**

(Negligence - Direct and Vicarious Liability - Defendant Connecticut Valley Arms, Inc )

70. Plaintiff incorporates as fully set forth herein paragraphs 1 through 69.

71. Defendant CVA was negligent in failing to exercise reasonable care to prevent the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 from creating an unreasonable risk of harm to persons who might reasonably be expected to use or be affected the firearm while it was being used in a manner which Defendant CVA might reasonably have expected.

72. Defendant CVA was negligent in failing to exercise reasonable care to warn users of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 of the risk of harm associated with the foreseeable use of the weapon.

73. The negligence of Defendant CVA also includes vicarious liability for the negligence of its employees, agents and representatives, under its supervision and control who are acting in the course and scope of their employment

74. Defendant CVA was negligent in failing to reasonably and carefully design, test and manufacture the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to exercise ordinary care to provide an adequate and proper mechanical design, materials and manufacturing specifications and processes for the breech plug, barrel, and related component parts of Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to perform or require performance of adequate, proper and reasonable quality control procedures including inspection and testing of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

75. As a direct and proximate result and consequence of the negligence of defendant CVA, plaintiff Del Creason has suffered injuries, damages and losses as more fully set forth herein.

**SEVENTH CLAIM FOR RELIEF**

(Negligence - Direct and Vicarious Liability - Defendant Blackpowder Products, Inc )

76. Plaintiff incorporates as fully set forth herein paragraphs 1 through 75.

77. Defendant Blackpowder Products was negligent in failing to exercise reasonable care to prevent the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 from creating an unreasonable risk of harm to persons who might reasonably be expected to use or be affected the firearm while it was being used in a manner which Defendant CVA might reasonably have expected.

78. Defendant Blackpowder Products was negligent in failing to exercise reasonable care to warn users of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 of the risk of harm associated with the foreseeable use of the weapon.

79 The negligence of defendant Blackpowder Products also includes vicarious liability for the negligence of its employees, agents and representatives, under its supervision and control who are acting in the course and scope of their employment.

80 Defendant Blackpowder Products was negligent in failing to reasonably and carefully design, test and manufacture the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to exercise ordinary care to provide an adequate and proper mechanical design, materials and manufacturing specifications and processes for the breech plug, barrel, and related component parts of Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to perform or require performance of adequate, proper and reasonable quality control procedures including inspection and testing of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

81. As a direct and proximate result and consequence of the negligence of defendant Blackpowder Products, plaintiff Del Creason has suffered injuries, damages and losses as more fully set forth herein

**EIGHTH CLAIM FOR RELIEF**

(Negligence - Direct and Vicarious Liability - Defendant D.C. 1980, Inc.)

82. Plaintiff incorporates as fully set forth herein paragraphs 1 through 81.

83 Defendant D.C. 1980 was negligent in failing to exercise reasonable care to prevent the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 from creating an unreasonable risk of harm to persons who might reasonably be expected to use or be affected the firearm while it was being used in a manner which defendant D.C. 1980 might reasonably have expected.

84. Defendant D.C. 1980 was negligent in failing to exercise reasonable care to warn users of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96 of the risk of harm associated with the foreseeable use of the weapon.

85. The negligence of defendant D.C. 1980 also includes vicarious liability for the negligence of its employees, agents and representatives, under its supervision and control who are acting in the course and scope of their employment.

86. Defendant D.C. 1980 was negligent in failing to reasonably and carefully design, test and manufacture the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to exercise ordinary care to provide an adequate and proper mechanical design, materials and manufacturing specifications and processes for the breech plug, barrel, and related component parts of Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96. Defendant failed to perform or require performance of adequate, proper and reasonable quality control procedures including inspection and testing of the Pro Hunter muzzle-loader rifle serial no. 61-13-029934-96.

87. As a direct and proximate result and consequence of the negligence of defendant D.C. 1980, Plaintiff, Del Creason, has suffered injuries, damages and losses as more fully set forth herein.

**NINTH CLAIM FOR RELIEF**

(Breach of Implied Warranties - Defendant - Dikar, S. Coop, LTDA.)

88. Plaintiff incorporates as fully set forth herein paragraphs 1 through 87.

89. Defendant Dikar was a merchant with respect to the firearm. The firearm was not of merchantable quality at the time of its sale.

90. This breach of warranty caused Plaintiff Del Creason injuries, damages and losses as more fully set forth herein.

**TENTH CLAIM FOR RELIEF**

(Breach of Implied Warranties - Defendant - Connecticut Valley Arms)

91. Plaintiff incorporates as fully set forth herein paragraphs 1 through 90.

92. Defendant CVA was a merchant with respect to the firearm. The firearm was not of merchantable quality at the time of its sale.

93. This breach of warranty caused Plaintiff, Del Creason, injuries, damages and losses as more fully set forth herein.

**ELEVENTH CLAIM FOR RELIEF**

(Breach of Implied Warranties - Defendant - Blackpowder Products, Inc.)

94. Plaintiff incorporates as fully set forth herein paragraphs 1 through 93.

95. Defendant Blackpowder Products was a merchant with respect to the firearm. The firearm was not of merchantable quality at the time of its sale.

96. This breach of warranty caused Plaintiff, Del Creason, injuries, damages and losses as more fully set forth herein.

**TWELFTH CLAIM FOR RELIEF**

(Breach of Implied Warranties - Defendant - D.C. 1980, Inc.)

97. Plaintiff incorporates as fully set forth herein paragraphs 1 through 96.

98. Defendant D.C.1980 was a merchant with respect to the firearm. The firearm was not of merchantable quality at the time of its sale.

99. This breach of warranty caused Plaintiff, Del Creason, injuries, damages and losses as more fully set forth herein.

WHEREFORE, Plaintiff requests judgment against the Defendants as follows:

A. Against Defendant Dikar:

1. Compensatory damages in an amount to be determined by a jury.
2. Costs, interest from the date of incident and such other further relief as the Court deems proper.

B. Against Defendant CVA, Inc

1. Compensatory damages in an amount to be determined by a jury.
2. Costs, interest from the date of incident and such other further relief as the Court deems proper.

C. Against Defendant Blackpowder Products

1. Compensatory damages in an amount to be determined by a jury.
2. Costs, interest from the date of incident and such other further relief as the Court deems proper.

D. Against D.C. 1980, Inc.

1. Compensatory damages in an amount to be determined by a jury.
2. Costs, interest from the date of incident and such other further relief as the Court deems proper.

**PLAINTIFF REQUESTS THIS MATTER TO BE TRIED TO A JURY OF SIX PERSONS.**

Respectfully submitted this 30<sup>th</sup> day of August, 2007.

FOGEL, KEATING, WAGNER,  
POLIDORI & SHAFNER, P.C.

*Original signed document is on file at the offices of Fogel  
Keating Wagner Polidori and Shafner, P.C.*

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Michael O'B. Keating  
Attorney for Plaintiff

Plaintiff's Address:

8783 West Stetson Place  
Littleton, CO 80123



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

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JON D KATZENMEIER and JULIE  
KATZENMEIER, Husband and Wife,

Plaintiff,

v.

BLACKPOWDER PRODUCTS, INC., a  
Corporation, a/k/a CONNECTICUT VALLEY  
ARMS,

Defendant

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Case No 4:06-cv-00169-REL-RAW

**STATEMENT OF INTEREST**

As required by LR 3.2 and LR 81.1(c), (d), and (e), Blackpowder Products, Inc.,

Defendant in this case provides the following information to the court:

(a) *The following are the names of all associations, firms, partnerships, corporations, and other artificial entities that either are related to the defendant as a parent, subsidiary, or otherwise, or have a direct or indirect pecuniary interest in the defendant's outcome in the case:*

100 percent of Defendant Blackpowder Products, Inc.'s stock is owned by Dikar, S. Coop. LTDA, a foreign cooperative located in the country of Spain.

(b) *With respect to each entity named in response to (a), the following describes its connection to or interest in the litigation, or both:*

None

Respectfully submitted,

WHITFIELD & EDDY, P.L.C.  
317 Sixth Avenue, Suite 1200  
Des Moines, IA 50309  
Telephone: (515) 288-6041  
Fax: (515) 246-1474  
E-mail: reynolds@whitfieldlaw.com

By: /s/ Kevin M. Reynolds  
Kevin M. Reynolds PK0004634

ATTORNEY FOR DEFENDANT,  
BLACKPOWDER PRODUCTS, INC., a  
Corporation, a/k/a CONNECTICUT VALLEY  
ARMS

Original filed.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2006, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following:

Thomas J. Duff  
DUFF LAW FIRM  
The Griffin Building  
319 Seventh Street, Suite 600  
Des Moines, Iowa 50309  
Telephone: (515) 283-1111  
Fax: (515) 282-0477  
Email: tom@tdufflaw.com

Roxanne Barton Conlin  
ROXANNE CONLIN & ASSOCIATES, P.C.  
The Griffin Building  
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Telephone: (515) 283-1111  
Fax: (515) 282-0477  
Email: rconlin@roxanneconlinlaw.com

ATTORNEYS FOR PLAINTIFF

I hereby certify that I have mailed by United States Postal Service the documents to the following non-ECF system participants:

Gary A. Eaton  
William E. Sparks  
EATON & SPARKS  
1717 East 15<sup>th</sup> Street  
Tulsa, OK 74104  
Phone: (918) 743-8781  
Fax: (918) 744-0383  
Email: garyeatonlaw@aol.com

ATTORNEYS FOR PLAINTIFF

By: /s/ Kevin M. Reynolds

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
BOWLING GREEN DIVISION  
CASE NO. 1:03CV-190-R

TERRY EMBRY and YULANDA EMBRY,

PLAINTIFFS

v.

CONNECTICUT VALLEY ARMS,  
DC 1980 INC. f/k/a CONNECTICUT  
VALLEY ARMS, INC., and DIKAR, S.  
COOP. LTDA.,

DEFENDANTS

**ORDER**

This matters comes before this Court on Dikar's motion to dismiss (Dkt #10) the Embrys' complaint for lack of jurisdiction over Dikar,<sup>1</sup> which is "a Spanish cooperative located in Bergara, Spain." The Embrys responded (Dkt #11) and Dikar has replied (Dkt #13) and this matter is ripe for decision.

This Court's fellow federal district courts have considered the arguments Dikar presents here. *See Edwards v. Connecticut Valley Arms, et al.*, 6:02-CV-428-KKC (E.D. Ky. Oct. 27, 2003); *Haymaker v. Connecticut Valley Arms, et al.*, No. 97-28 (E.D. Ky. Feb. 17, 1999); *see also Neal v. Connecticut Valley Arms, et al.*, No. 01-02 (E.D. Ky. Jul 25, 2001) (relying on *Haymaker, supra*). There are no material facts that differentiate this case from those decided by Judge Caldwell (*Edwards*) and Judge Forrester (*Haymaker; Neal*).

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<sup>1</sup>Dikar originally also argued that the Embrys failed to perfect service under the Hague Convention, but have since withdrawn that complaint. (Dkt #13 at 1 n.1.)

This Court is persuaded by the analysis presented by Judge Caldwell and Judge Forrester and adopts them herein. Specifically, this Court finds that Dikar "purposefully availed of the privilege of acting or causing consequence in the state of Kentucky," *Edwards, supra*, at pg 10, such that personal jurisdiction is proper under the "stream of commerce 'plus'" approach suggested by Justice O'Connor in *Asahi Metal Industry Co. v. Superior Court of Cal.*, 480 U.S. 102 (1987) and adopted by the Sixth Circuit in *Bridgeport Music, Inc. v. Still N the Water Publishing*, 327 F.3d 472, *cert. denied* 124 S.Ct. 399, 157 L.Ed. 2d 279 (1993). This Court concludes that its exercise of personal jurisdiction over Dikar is consistent with statutory and constitutional commands. Therefore, Dikar's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) is **DENIED**.

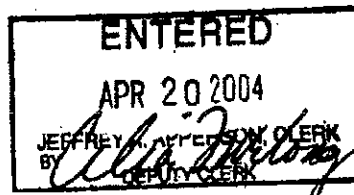
A Rule 16 telephonic scheduling conference will be held in this matter at **11:15 AM** on **May 17, 2004, CDT**.

**IT IS SO ORDERED.**

This is the 7 day of April, 2004.

  
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Thomas B. Russell, Judge  
United States District Court

✓ cc: counsel





ATTENTION:  
IN-LINE MUZZLELOADING RIFLE OWNERS

**VOLUNTARY RECALL NOTICE**

Connecticut Valley Arms (CVA) announces a voluntary recall of In-Line Muzzleloading Rifles manufactured in 1995 and 1996

This voluntary recall is due to the occurrence of very severe accidents when using the rifles manufactured during that period which never happened before. Although its cause is not yet known, it creates extremely dangerous conditions and a potential for serious injury when firing the rifle.

To identify your rifle as one affected by the voluntary recall, read the serial number on the barrel opposite the side of the bolt. If the last two digits are 95 or 96, we will send you a replacement barrel

To receive your replacement barrel, at no charge, please call our **VOLUNTARY RECALL HOTLINE** at 1-770-449-4687. You must have the complete serial number of your gun when you call us.

When you receive your replacement barrel, CVA will also send you a step-by-step instruction sheet on how to remove and transfer the parts from the existing barrel to the replacement barrel

We apologize for any inconvenience. At CVA, customer safety and satisfaction always come first!

Sincerely,

Robert Hickey  
President

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