

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.:

DEL L. CREASON

Plaintiff,

v.

CONNECTICUT VALLEY ARMS, INC.;
D.C. 1980, INC., f/k/a/ CONNECTICUT VALLEY ARMS, INC.;
BLACKPOWDER PRODUCTS, INC.;
DIKAR, S COOP., LTDA,

Defendants.

DEFENDANT'S NOTICE OF REMOVAL

COME NOW Defendant D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc. ("D.C. 1980"), individually and by and through its attorneys of record, Kevin F. Amatuzio and Lori K. Bell, of the law firm of Montgomery, Kolodny, Amatuzio & Dusbabek, L.L.P. and James E. Singer, of the law firm of Bovis, Kyle & Burch, LLC, and respectfully submits this Notice of Removal pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, and states as follows:

1 On or about August 30, 2007, Plaintiff filed his Complaint and Jury Demand against Defendants in the District Court for the State of Colorado, Denver County, entitled *Del L. Craeson v. Connecticut Valley Arms, Inc.; D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc.; Blackpowder Products, Inc., Dikar, S. Coop., LTDA*, Case No. 2007CV8452, Division 3. The Complaint and Summons in that action were served on and received by CVA and Blackpowder on September 19, 2007. The Complaint and Summons were served on and received by D.C. 1980 on September 23, 2007.

2. Defendants, D.C. 1980, Connecticut Valley Arms, and Blackpowder Products, Inc., agree and consent to this removal. The signatures of the undersigned counsel, who jointly represent DC 1980, Connecticut Valley Arms and Blackpowder Products, Inc., denote the consent and agreement to removal of DC 1980, Connecticut Valley Arms and Blackpowder Products, Inc. Thus, in accordance with the rule of unanimity, all served defendants join and consent to this removal petition. *Glendening v. Genuine Parts Company, Inc.*, 960 F.Supp. 243, 244 (D. Colo. 1997).

3. Defendant Dikar, a foreign corporation with its principal place of business in Bergara, Spain, has not been served and its consent is therefore not required for removal. *Glendening, supra.*

4. The described action is a civil action in which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332(a), as the action is one between citizens of different states and the matter in controversy is alleged to exceed the sum of \$75,000, exclusive of interests and costs. Plaintiff, Del L. Creason, is alleged in the Complaint to be a resident of the State of Colorado. *See Plaintiff's Complaint*, ¶ 17. Thus, Plaintiff is considered to be a citizen of the State of Colorado pursuant to 28 U.S.C. § 1332(a). Plaintiff alleges that Defendants CVA, DC 1980 and Blackpowder are foreign corporations with their principal place of business in Georgia. *See Plaintiff's Complaint*, ¶¶ 1, 3 and 5. Plaintiff alleges that Defendant Dikar is a foreign corporation with its principal place of business in Bergara, Spain. *See Plaintiff's Complaint*, ¶ 7. Accordingly, all parties are diverse for purposes of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a).

5. The Plaintiff alleges various claims of strict liability, negligence, and breach of implied warranty claims against the Defendants as a result of an alleged misfire of a muzzle

loader rifle accident that occurred in Morgan County, Colorado. The Complaint is devoid of any allegations related to the amount of monetary damages sought by the Plaintiff. However, Plaintiff's Complaint alleges damages for physical, psychological and emotional injuries, permanent disfigurement, function impairment, pain and suffering, loss of quality of life, hospital, rehabilitative and medical expenses, loss of income and loss of earning capacity. See Plaintiff's Complaint, ¶ 39. Further, the District Court Civil (CV) Case Cover Sheet for Initial Pleading of Complaint reveals that the Plaintiff does not wish the simplified procedure of Colorado Rule of Civil Procedure 16.1 to apply, "because Plaintiff is seeking a monetary judgment for more than One Hundred Thousand Dollars (\$100,000.00) against the Defendants, including attorney fees, penalties or punitive damages, but excluding interest and costs according to C.R.C.P. 16.1(c)." See Plaintiff's Civil Cover Sheet, ¶ 1, Exhibit A hereto. Finally, in support of a settlement demand, Plaintiff alleges medical expenses of \$106,360.76. See, Consolidated Statement of Benefits, attached as Exhibit B.

6 Given the foregoing allegations contained in Plaintiff's Complaint, Civil Cover and medical expenses statement, this action is properly removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1441(a) because the parties are diverse and the amount in controversy exceeds \$75,000, exclusive of interests and costs. See *Laughlin v. K-Mart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995) ("The amount in controversy is ordinarily determined by the allegations in the complaint, or, where they are not dispositive, by the allegations in the notice of removal."); and *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 366 (7th Cir. 1993) (stating that the jurisdictional amount is satisfied if a defendant in a removed action can show to a reasonable probability that the amount in controversy exceeds the jurisdictional threshold).

7. In accordance with the requirements of 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days after the receipt by Defendants of, "other paper from which it may first be ascertained that the case is one which is or has become removable." Additionally, this Notice of Removal is filed within thirty (30) days of being served with the initial pleadings.

8. Written notice of the filing of this Notice of Removal will be promptly served upon Plaintiff and a copy of this Notice of Removal will be filed in the appropriate state court as required by 28 U.S.C. § 1446(d).

9. Pursuant to 28 U.S.C. § 1446(a) and D.C. Colo. LCivR. 81.1, all papers filed in this matter in the Denver County District Court are attached to this Notice of Removal. See Exhibits A, C, D, E, F, and G. Defendants represent that no motions are pending and no hearings are currently set in the state court.

10. By filing and/or consenting to this Notice of Removal, Defendants do not waive any defenses which may be available to them.

WHEREFORE, Defendant, D.C. 1980, Inc., f/k/a Connecticut Valley Arms, Inc., hereby gives notice of removal of this action from the City and County of Denver District Court, State of Colorado, to the United States District Court for the District of Colorado.

Respectfully submitted October 17, 2007.

MONTGOMERY, KOLODNY,
AMATUZIO & DUSBABEK, L.L.P.

s/Lori K. Bell

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ATTORNEYS FOR DEFENDANTS,
CONNECTICUT VALLEY ARMS, INC.,
D.C. 1980, INC., f/k/a CONNECTICUT
VALLEY ARMS, INC., AND
BLACKPOWDER PRODUCTS, INC.;
DIKAR, S. COOP., LTDA,

Respectfully submitted October 17, 2007.

BOVIS, KYLE & BURCH, L.L.C.

s/James E. Singer

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CERTIFICATE OF MAILING

I hereby certify that on October 17, 2007, I electronically filed the foregoing **DEFENDANT'S NOTICE OF REMOVAL** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail address(es), or if e-mail address is not available, send notification by U.S. Mail this date.

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s/Faithe Charnow
Faithe Charnow