

EASTERN DISTRICT OF LOUISIANA

FILED 09 JUL 27 12:20 USDC-LAE

JEFFREY MICHAEL SMITH, individually,
and as administrator of the estate of his
minor child KIRSTEN SMITH, and KITTIE
SMITH

CIVIL ACTION NO.

09-4501

JUDGE

SECT. R MAG3

VERSUS

MAGISTRATE JUDGE

DIKAR, S.COOP. LTD, A FOREIGN
CORPORATION, D.C. 1980, INC.

JURY TRIAL

COMPLAINT FOR DAMAGES

The complaint of Jeffrey Michael Smith, individually, and as the administrator of the estate of his minor child, Kirsten Smith, and Kittie Smith allege and state as follows:

I.

Plaintiffs, Jeffrey Michael Smith and Kittie Smith were and at all times relevant hereto, husband and wife and are citizens and residents of St. Tammany Parish, Louisiana. Kirsten Smith is their daughter, and at all relevant times, resided with them.

II.

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, Gipuzukoa, 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 firearm products to be used by consumers in various countries, including the United States, and more specifically, the State of Louisiana. Defendant, Dikar, did at

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all times pertinent hereto, manufacturer muzzle loader rifle products pursuant to defendant, D.C. 1980's, designs and manufacturing specifications, including, but not limited to, the CVA Hawkins muzzle loader rifle product line and it did all times pertinent hereto, deliver and provide such muzzle loader rifle products to defendant, D.C. 1980, for distribution and sale to consumers in the United States. Defendant, Dikar, is subject to service of process pursuant to the Hague Convention.

III.

Defendant, D.C. 1980, Inc. (D.C. 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, muzzle loader rifles in general, and the CVA Hawkins model in particular. D.C. 1980 conducted its business under the trade name Connecticut Valley Arms. Its principal place of business was, at all times pertinent hereto, in Norcross, GA.

VENUE AND JURISDICTION

IV.

Dikar and D.C. 1980 offer their product for sale and distribution in the State of Louisiana into a substantial customer base in the State of Louisiana and derive substantial benefits from doing business in Louisiana. Dikar and D.C. 1980 maintain minimum contacts with the State of Louisiana and are otherwise present in this State so that this Court may exercise jurisdiction over them. Further, the product failure that occurred to give rise to this case occurred in the State of Louisiana.

V.

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.

VI.

The plaintiffs' claims for damages against these defendants exceed \$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.

VII.

The Dikar, D.C. 1980, CVA Hawkins muzzle loader rifle, serial number 956439 was manufactured, assembled and packaged by defendant, Dikar, in Spain in the Summer of 1994 in accordance with, and pursuant to designs and specifications of defendants D.C. 1980 and Dikar. Defendant, Dikar, exported the Dikar, D.C. 1980, CVA Hawkins muzzle loader rifle along with other finished muzzle loader rifle products and components to D.C. 1980, which in turn sold such muzzle loader rifle products and components in the United States of America and the State of Louisiana.

VIII

The Dikar, D.C. 1980, CVA Hawkins muzzle loader rifle series, including serial number 956439, was designed, developed, imported, marketed and placed into the stream of interstate commerce by defendants Dikar and D.C. 1980 for sale to and use by consumers like plaintiff, Jeffrey Michael Smith, in numerous states including Louisiana.

IX.

The gun in question was purchased by George Michael Smith, III, the father of Jeffrey Michael Smith, and given to Jeffrey Michael Smith as a Christmas present, in new condition, sometime subsequent to the date of manufacture.

X.

The Dikar, D.C. 1980, CVA Hawkins muzzle-loader rifle serial number 956439 had been properly maintained and had been fired only approximately 50 times when it failed causing serious and permanent injuries to Jeffrey Michael Smith.

XI.

On January 1, 2009, in the Honey Island Swamp, located within St. Tammany Parish, Louisiana, plaintiff, Jeffrey Smith, went into the woods that afternoon, the afternoon of January 1, 2009, with the gun appropriately loaded with 100 grains of Pyrodex and a 300 grain sabot bullet, with the firearm on safety, the half cocked position. The CVA Hawkins is equipped with a two trigger system and the set trigger was not set. After reaching his hunting location, plaintiff, Jeffrey Smith, heard a hog in the woods and leaned against a tree and cocked the hammer of the firearm placing the butt of the Hawkins on the top of his right foot while holding the fore end of the barrel with his left hand. As he looked over his left shoulder to try to visualize the hog, his right hand moved over and above the muzzle of the Hawkins and the Hawkins discharged without the set trigger having been set nor the firing trigger having been touched. As a result thereof, a large hole was blown in his right hand causing painful and permanently disabling and disfiguring injuries to his right hand, and necessitating six surgeries including a bone graft from his left lower leg to his

right hand.

XII.

Plaintiff, Jeffrey Smith, managed to walk out of the swamp losing an extreme amount of blood and was met by deputies associated with the St. Tammany sheriff's department inasmuch as Jeff Smith had managed to call 911. Thereafter, he was transferred by a land based ambulance to an awaiting air-med ambulance for further transportation to a New Orleans based hospital. Agent Joel Crompt met Mr. Smith as Mr. Smith was in the land based ambulance and as they were preparing to put him in the helicopter ambulance to take him to New Orleans. Agent Joel Crompt took possession of the firearm. Agent Joel Crompt determined that the hammer of the firearm would release from the full cocked position without the set trigger having been set and without the firing trigger having been pulled.

XIII.

As a result of the failure of the firearm in question, Jeff Smith has sustained compensable damages and losses in at least the following respects:

- A. Past medical expenses in an amount in excess of \$150,000.00;
- B. Future medical expenses in an amount which is yet to be determined;
- 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; and

H. Loss of enjoyment of quality of life.

XIV.

Both Mrs. Smith Mr. Smith's daughter have lost the society of their husband and father, respectively.

XV.

The Dikar, D.C. 1980, CVA Hawkins muzzle loader rifle, serial number 956439, was unreasonably dangerous in construction or composition.

XVI.

The Dikar, D.C. 1980, CVA Hawkins muzzle loader rifle, serial number 956439, was unreasonably dangerous in design.

XVII.

The Dikar, D.C. 1980, CVA Hawkins muzzle loader rifle, serial number 956439, was unreasonably dangerous in failing to provide adequate warnings.

XVIII.

The above noted product defects, manufacture, design, and failure to warn were a substantial factor in causing the plaintiff's injuries and the plaintiffs' damages.

WHEREFORE, plaintiffs, Jeffrey Michael Smith, individually, and as the administrator of the estate of his minor child, Kirsten Smith, and Kittie Smith pray for judgment against defendants Dikar and D.C. 1980, 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 request trial by jury. Plaintiffs also pray for judgment against defendants and each of them, for taxable costs, prejudgment

and post judgment interest, and all other relief to which they may be entitled.

Respectfully submitted this 27 day July, 2009.

deGRAVELLES, PALMINTIER, HOLTHAUS & FRUGÉ, L.L.P.

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