

FILED  
COURT OF COMMON PLEAS

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CLERK OF COURTS  
MONTGOMERY CO., OHIO

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

EUGENE ROBERTS  
4512 Riverside Dr. Apt. D  
Dayton, Ohio 45405

Plaintiff,

vs.

CONNECTICUT VALLEY ARMS,  
INC., a Georgia Corp.  
by and through their  
statutory agent,  
CT Corporation System  
One Commercial Plaza  
Hartford, CT 06103

and

REMINGTON ARMS CO., INC.,  
a Delaware Corp.  
by and through their  
statutory agent,  
CT Corporation System  
815 Superior Ave. NE  
Cleveland, Ohio 44114

and

SAM'S CLUB, a division  
of WAL-MART STORES, INC.,  
by and through their  
statutory agent  
CT Corporation System  
815 Superior Ave. NE  
Cleveland, Ohio 44114

CASE NO.

97-3015

JUDGE

Lowdown

PRE-H.B. 350 CASE

COMPLAINT FOR DAMAGES  
WITH JURY DEMAND ENDORSED  
HEREON

(Personal Injury/Products  
Liability)

DWIGHT D.  
BRANNON  
&  
ASSOCIATES

P.O. Box 750425  
Dayton, Ohio  
45475-0425  
TELEPHONE:  
(513) 228-2306  
FACSIMILE:  
(513) 228-8475

and \*

ALL OTHER JANE OR JOHN \*

DOES, WHO EITHER AS \*

CORPORATIONS, BUSINESS \*

ASSOCIATIONS, SOLE \*

PROPRIETORS, INDIVIDUALS, \*

AGENTS OR EMPLOYEES \*

THEREOF, WHOSE NAMES ARE \*

UNKNOWN BUT SHALL BE \*

ASCERTAINED THROUGH \*

DISCOVERY, WHO \*

MANUFACTURED, ASSEMBLED, \*

DISTRIBUTED, OR REPAIRED \*

THE WEAPON, AMMUNITION, \*

PERCUSSION CAPS, AND/OR \*

POWDER AT ISSUE OR ANY \*

OF THEIR COMPONENTS. \*

Defendants. \*

COUNT ONE

**PARTIES/FACTS**

1. At all times relevant to the matters plead herein, Plaintiff Eugene Roberts (hereinafter "Roberts") was and is a resident of the City of Dayton, Montgomery County, Ohio.

2. Defendant Connecticut Valley Arms, Inc., (hereinafter "CVA") is, at all times mentioned in this complaint, a corporation organized and existing under the laws of the State of Georgia, doing business in Ohio.

3. Defendant Remington Arms Co., Inc., (hereinafter "Remington") is, at all times mentioned in this complaint, a Delaware corporation, doing business in Ohio.

4. Defendant Sam's Club (hereinafter "Sam's") is, at all times mentioned in this complaint, a corporation doing business in Ohio, with its principle place of business at 6955 Miller Lane, Dayton, Ohio.

5. On or about October 16, 1996, Plaintiff purchased, at Sam's, a CVA Apollo Pro-Hunter black powder rifle that had been manufactured by Defendant CVA and sold for resale to the general public.

6. Upon purchasing said rifle, Roberts watched the instructional video that came with the rifle 2 to 3 times,

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and had read the owner's manual and warranty book. At all times Roberts used the weapon in conformity with said manual and video and used the weapon in the manner in which it was intended to be used.

7. Roberts had completely disassembled his rifle and cleaned it thoroughly, and had fired it approximately 20 times before the incident below occurred.

8. Roberts was using 385 grain Remington pre-lube lead slugs, 100 grain Pyrodex type powder, believed manufactured by Remington, and number 11 CVA percussion caps.

9. Roberts had fired the weapon successfully approximately 35 times prior to this day, and 8 or 9 times on November 17, 1996.

10. Roberts measured 100 grains of powder, as directed by the manufacturer for the size of the bullet.

11. After measuring the powder Roberts placed it in the rifle barrel, making sure it was positioned as instructed.

12. Prior to firing the rifle, Roberts placed a percussion cap on the rifle.

13. Upon attempting to fire the rifle, said rifle exploded in Roberts face, severely injuring him, including but not limited to permanent retinal damage, permanent facial injuries and disfigurement requiring surgery and placement of metal brackets in the jaw.

#### COUNT TWO

#### PRODUCT LIABILITY

14. Plaintiffs re-allege paragraphs 1 through 13 as though fully re-written herein.

15. Defendant CVA, Remington and/or John or Jane Doe is a manufacturer, as defined at Ohio Revised Code §2307.71, which designed, produced, created, made, constructed, and/or assembled a certain rifle and its components, called a CVA Apollo Pro-Hunter black powder rifle for use by hunters such as Eugene Roberts, plaintiff here.

16. Defendant Sam's is a supplier, as defined at O.R.C. §2307.71, which sold, distributed, leased, prepared, blended, packaged, labeled or otherwise participated in the placing of the rifle in the stream of commerce.

17. The rifle was defective in manufacture pursuant to the provisions of O.R.C. §2307.74.

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18. The rifle was defective in design pursuant to the provisions of O.R.C. §2307.75.

19. The rifle was defective due to inadequate or conflicting warning or instruction pursuant to the provision of O.R.C. §2307.76.

20. The rifle was defective because it did not conform, when it left control of the defendant, to a representation made by defendant, pursuant to the provision of O.R.C. §2307.77.

21. A defective aspect of the rifle, specifically including, but not limited to, the rifle's powder capacity, which can be overloaded if the manufacturer's own recommendations are followed, was a direct and proximate cause of the harm for which the plaintiffs seek to recover compensatory and punitive damages pursuant to O.R.C. §2307.73.

22. As a direct and proximate result of the breach of the duties of the Defendants, the Plaintiff has suffered damages in excess of \$25,000.

### COUNT THREE

#### BREACH OF WARRANTIES

23. Plaintiff re-alleges paragraphs 1 through 22 as though fully rewritten herein.

24. As a result of the defective rifle and/or components and failure to provide a safe rifle and components, as well as proper operating instructions, the Defendants breached the express and/or implied warranties given to the Plaintiff as an ultimate user. Among the express and/or implied warranties breached by said Defendants were the warranties of fitness for the particular purpose, warranties of merchantability, warranties of description, and any other warranties that were made known by them, or could have been reasonably communicated by them.

25. Said breach of warranties directly and proximately resulted in the injuries and damages to the Plaintiff as plead herein.

### COUNT FOUR

#### SUPPLIER'S NEGLIGENCE

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26. Plaintiffs re-allege paragraphs 1 through 25 as though fully rewritten herein.

27. Defendant Sam's is a supplier as defined at O.R.C. §2307.71, that, in the course of a business conducted for that purpose, installed, repaired or maintained an aspect of the rifle that caused harm.

28. Defendant supplier had a duty to Plaintiffs to properly assemble the rifle, maintain it in proper working condition, and explain its workings to Plaintiffs, and was negligent in performing these duties.

29. As a direct and proximate result of Defendant Sam's negligence, the Plaintiff has suffered damages in excess of \$25,000.

#### COUNT FIVE

##### **SUPPLIER STRICT LIABILITY**

30. Plaintiffs re-allege paragraphs 1 through 29 as though fully rewritten herein.

31. The Defendant Sam's is subject to strict liability pursuant to O.R.C. §2307.78(B) because the supplier failed to offer appropriate instructions on the weapon.

32. As a direct and proximate result of the strict liability of Defendant Sam's, the Plaintiff suffered damages in excess of \$25,000.

#### COUNT SIX

##### **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

33. Plaintiffs re-allege paragraphs 1 through 30 as though fully rewritten herein.

34. As a direct and proximate result of the joint and several negligence and liability of the Defendants, the Plaintiff has suffered extreme mental anguish and emotional distress and due to the nature of his injuries, the Plaintiff shall continue to suffer emotional distress into the future.

35. As a direct and proximate result of the joint and several wrongful conduct of all Defendants, Plaintiff has suffered extreme emotional distress, pain, mental anguish, lost wages, diminishment of earning capacity, loss of enjoyment of life, loss of enjoyment of daily activities, and other economic, psychological and hedonistic damages.

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36. As a direct and proximate result of the negligence and liability of Defendants, the Plaintiff suffered damages in excess of \$25,000.

#### COUNT SEVEN

##### PERSONAL INJURY OF EUGENE ROBERTS

37. Plaintiffs re-allege paragraphs one 1 through 36 as though fully rewritten herein.

38. Eugene Roberts has experienced permanent and debilitating injuries to his face and eye as a direct and proximate result of this accident, severe emotional distress, and mental anguish. Said conditions are permanent.

39. As a direct and proximate result of the joint and several wrongful conduct of all Defendants, Plaintiff has incurred reasonable and necessary medical expenses in an amount yet to be calculated and, because of the permanency of his injuries, will incur further such expenses in the future.

#### COUNT EIGHT

##### PUNITIVE DAMAGES

40. Plaintiffs re-allege paragraphs 1 through 39 as though fully rewritten herein.

41. The Defendants had duties owed to Plaintiff, as aforesaid, which were breached by Defendants.

42. The conduct of the Defendants was grossly negligent and/or a willful disregard of the rights of the Plaintiff, which was substantially certain to result in injury to the Plaintiffs.

44. Said conduct of the Defendants constitutes legal malice (implied malice) and the Plaintiff is entitled to punitive damages.

#### COUNT NINE

45. Plaintiff realleges paragraphs 1 through 44 as though fully rewritten herein.

46. The manufacture, sale, and distribution of a black powder rifle is inherently dangerous with such dangers uniquely known to the providers and not the consumers.

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COUNT TEN

47. Plaintiff realleges paragraphs 1 through 46 as though fully rewritten herein.

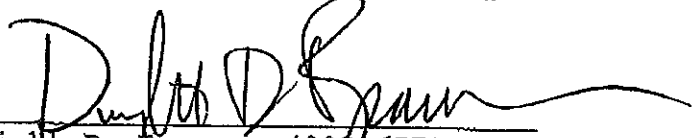
48. The conduct of the Defendants, jointly and severally, created a nuisance that proximately caused Plaintiff's injuries.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, as follows:

- A) Compensatory damages in an amount to exceed \$25,000.00;
- B) Punitive damages in an amount to exceed \$25,000.00;
- C) Pre-judgment interest, post-judgment interest, costs of this action to include reasonable attorneys fees;
- D) Appropriate restraining and cease and desist orders; and
- E) For such other and further relief to which they may be deemed entitled either at equity or law, including specific statutory and common law remedies.

Respectfully submitted,

DWIGHT D. BRANNON & ASSOCIATES


  
Dwight D. Brannon (0021657)  
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JURY DEMAND

Plaintiff respectfully demands a trial by jury on all issues presented herein.

  
Dwight D. Brannon  
Attorney for Plaintiff

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**MONTGOMERY COUNTY COMMON PLEAS COURT/GENERAL DIVISION  
PRE-H.B. 350 CASE INFORMATION FORM**

**PARTIES**

EUGENE ROBERTS

Case Number 97-3015

**Plaintiffs**

DWIGHT D. BRANNON

Counsel for Plaintiff(s)  
(If Pro Se, include telephone number)

0021657  
Attorney Registration Number

Jury Demand (X) XX Yes \_\_\_ No  
GREATER THAN

- vs -

Prayer Amount \$ 25000.00  
Deposit Amount \$60.00

CONNECTICUT VALLEY ARMS, INC.  
REMINGTON ARMS CO., INC.  
SAM'S CLUB

If Amended Complaint or Instructions for  
Service filed, additional \$90.00 deposit due.

**Defendants**

**TYPE OF ACTION**

\_\_\_ PI Personal Injury  
\_\_\_ MM Medical Malpractice  
XX PL Product Liability

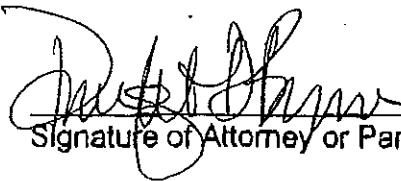
\_\_\_ PT Professional Tort  
\_\_\_ OT Other Torts

**DISCLAIMER**

I am filing this lawsuit as a result of Am. Sub. H.B. 350 becoming law on January 25, 1997. I realize that when this case is filed in the Montgomery County Clerk of Court's Office that the case will receive a case number, Judge assignment, and be entered on the official Clerk's docket and index. I further realize that no other action will be taken; no summons will be issued by the Clerk, and the complaint will not be served on the Defendants. I have paid the \$60.00 filing fee, and I acknowledge that this amount constitutes the real costs in the case.

I further understand that the Common Pleas Court may dismiss this complaint in accordance with the procedures outlined in the Pre-H.B. 350 General Administrative Order.

Original - Clerk  
Copy - Casflow Services, Court Operations

  
Signature of Attorney or Party Filing Suit