

STATE OF MICHIGAN

OFN: 1808.01

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

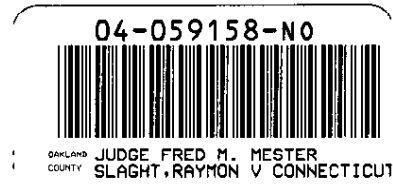
RAYMOND SLAGHT,

Plaintiff,

vs

CONNECTICUT VALLEY ARMS, a
Connecticut Corporation, CABELA'S, INC.
d/b/a CABELA'S IN DUNDEE, a Michigan
Corporation, BLACKPOWDER PRODUCTS,
INC., a Georgia Corporation, and DIKAR
S. COOP, LTDA.,

Defendants.



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FIRST AMENDED COMPLAINT

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in the Monroe County Circuit Court, where it was given docket no. 04-17573-NO, and was assigned to Judge Joseph A. Costello, Jr. The action remains pending.

The plaintiff says:

JURISDICTION/VENUE ALLEGATIONS

1. The parties reside in the following places:

(a) Plaintiff resides in Oakland County, Michigan;

(b) Defendant, **CONNECTICUT VALLEY ARMS (“CVA”)**, is a Connecticut Corporation, which carries on a continuous and systematic portion of its business in the State of Michigan by distributing goods to retail outlets in the State of Michigan, including Defendant Cabela’s, located in Monroe County, Michigan.

(c) Defendant, **CABELA’S, INC. d/b/a CABELA’S IN DUNDEE**, carries on a continuous and systematic portion of its business at in the City of Dundee, County of Monroe, State of Michigan.

(d) Defendant, **BLACKPOWDER PRODUCTS, INC.**, is a Georgia Corporation, which carries on a continuous and systematic portion of its business in the State of Michigan by distributing goods to retail outlets in the State of Michigan, including Defendant Cabela’s, located in Monroe County, Michigan.

(e) Defendant, **DIKAR S. COOP, LTDA.**, is a corporation headquartered in Spain, which carries on a continuous and systematic portion of its business in the State of Michigan by distributing goods to retail outlets in the State of Michigan, including Defendant Cabela’s, located in Monroe County, Michigan.

2. This cause of action arose in Tuscola County, Michigan.

3. The amount in controversy exceeds Twenty-Five Thousand Dollars (\$25,000), exclusive of interest, costs and attorney fees.

FACTUAL ALLEGATIONS

4. On or about March 9, 2002, Plaintiff purchased a black powder rifle distributed and warranted by defendants **CVA, BLACKPOWDER and DIKAR** and sold by defendant **CABELA'S** store in Dundee, Michigan. This was a 50 caliber rifle, model number 61-13-158677-01.

5. On March 29, 2002, Plaintiff loaded and shot this black powder rifle distributed and warranted by defendants **CVA, BLACKPOWDER and DIKAR** for the first time.

6. Upon shooting this black powder rifle for the first time, the gun blew up, causing serious injuries to Plaintiff, which will be set forth below.

COUNT I

NEGLIGENCE OF DEFENDANTS CVA, BLACKPOWDER and DIKAR

7. Defendants **CVA, BLACKPOWDER and DIKAR**, the distributors and warrantors of the black powder rifle, which is the subject of this cause of action, owed a duty to the end user, being the Plaintiff, to place into commerce and for retail usage products that were reasonably safe.

8. Defendants negligently breached its duty to Plaintiff as follows:

- (a) Failing to properly harden the metal used to manufacturer the **CVA, BLACKPOWDER and DIKAR** black powder rifle;
- (b) Failing to test the metal so that it met minimum requirements for safety;
- (c) Failing to design and manufacture a rifle that would stand the force reasonably applied when a consumer used the rifle.
- (d) Failing to properly advise the Plaintiff, governmental agencies responsible for consumer products safety and retail distributors of the rifle that the rifle sold was susceptible to blowing up.
- (e) Failing to adequately warn the Plaintiff of the possibility and imminence of the gun blowing up and the danger of such a blow up.

9. The Defendants' breaches of duty negligently and proximately caused the Plaintiff to suffer damages as set forth below.

COUNT II

BREACH OF IMPLIED WARRANTY AND FITNESS

10. Defendants, by manufacturing the rifle, or the components thereof, and distributing said items into the stream of commerce to be sold to a consumer impliedly warranted the fitness of the rifle, to-wit: that it was reasonably fit for its intended, anticipated, or reasonably foreseeable use.

11. The Defendants breached this implied warranty of fitness as follows:

- (a) Failing to properly harden the metal used to manufacture the rifle;
- (b) Failing to adequately test the metal used in the rifle to see that it met minimum requirements for its usage;
- (c) Failing to design and manufacture a rifle that would withstand the force reasonably applied when the rifle was shot;
- (d) Failing to properly advise the Plaintiff, governmental agencies responsible for consumer products safety and retail distributors of the rifle that the rifle sold was susceptible to blowing up.
- (e) Failing to adequately warn the Plaintiff of the possibility and imminence of the gun blowing up and the danger of such a blow up.

12. The Defendants' breach of express and implied warranties proximately caused the Plaintiff to suffer damages, as set forth below.

COUNT III

BREACH OF EXPRESS WARRANTY - CVA, BLACKPOWDER and DIKAR

13. Defendants **CVA, BLACKPOWDER and DIKAR** expressly warranted that its rifle met and/or exceeded industry standards. Defendants **CVA, BLACKPOWDER and DIKAR** breached this express warranty as follows:

- (a) Failing to properly harden the metal used to manufacturer the **CVA, BLACKPOWDER and DIKAR** black powder rifle;
- (b) Failing to test the metal so that it met minimum requirements for safety;
- (c) Failing to design and manufacture a rifle that would stand the force reasonably applied when a consumer used the rifle.
- (d) Failing to properly advise the Plaintiff, governmental agencies responsible for consumer products safety and retail distributors of the rifle that the rifle sold was susceptible to blowing up.
- (e) Failing to adequately warn the Plaintiff of the possibility and imminence of the gun blowing up and the danger of such a blow up.

14. Defendant's breach of the express warranty proximately caused Plaintiff to suffer injuries as set forth below.

COUNT IV

NEGLIGENCE OF DEFENDANT CABELA'S

15. Defendant, **CABELA'S**, sold and distributed a **CVA, BLACKPOWDER and DIKAR** black powder rifle, which blew up, proximately causing the ultimate injuries to Plaintiff.

16. Defendant **CABELA'S** owed a duty to Plaintiff and others similarly situated to distribute and sell its rifles in the manner of reasonable persons in the same circumstances.

17. Defendant **CABELA'S** owed a duty to Plaintiff to ensure that rifles that are represented as new were, in fact, new and had not been previously utilized, thus, increasing the risk of injury to the Plaintiff.

18. Defendant **CABELA'S** breached its duty of due care and prudence to plaintiff as follows:

- (a) Failing to provide a rifle that would not blow up upon usage;
- (b) Representing that the rifle was new when, in fact, it had been previously utilized;

- (c) Selling a rifle that it knew, or should have known, was unsafe;
- (d) Failing to adequately supervise and inspect rifles that it sold to ensure that they would not pose damage to the customers, including Plaintiff.
- (e) Negligence as of yet to be determined through discovery procedure.

19. The Defendant **CABELA'S** negligence proximately caused the Plaintiff to suffer damages, as set forth below.

COUNT V

BREACH OF WARRANTY

20. Defendant **CABELA'S** was engaged in the business distributing, assembly, and selling said **CVA, BLACKPOWDER and DIKAR** black powder rifle for ultimate use by the Plaintiff and similarly situated customers.

21. Defendant **CABELA'S** placed said **CVA, BLACKPOWDER and DIKAR** black powder rifle into the stream of commerce for use by Plaintiff, Raymond Slaght.

22. Said **CVA, BLACKPOWDER and DIKAR** black powder rifle was delivered by Defendant **CABELA'S** and was in a defective condition, was unreasonably dangerous to the public, including the Plaintiff, Raymond Slaght.

23. The Plaintiff, Raymond Slaght, utilized **CVA, BLACKPOWDER and DIKAR** black powder rifle for its ordinary and intended purposes.

24. Defendant **CABELA'S** impliedly and expressly warranted that said **CVA, BLACKPOWDER and DIKAR** was safe and fit for its intended purposes and used as reasonably foreseeable when it left Defendant's control.

25. Defendants breached said warranty in one or more of the following ways:

- (a) Failing to provide a rifle that would not blow up upon usage;

- (b) Representing that the rifle was new when, in fact, it had been previously utilized;
- (c) Selling a rifle that it knew, or should have known, was unsafe;
- (d) Failing to adequately supervise and inspect rifles that it sold to ensure that they would not pose damage to the customers, including Plaintiff.
- (e) Negligence as of yet to be determined through discovery procedure.

COUNT VI

CONSUMER PROTECTION ACT

26. The Defendants were involved in the conduct of business providing goods and property primarily for personal, family of household purposes.

27. That Defendants violated the Michigan Consumer Protection Act, MCL 445.901, *et seq.*, specifically, MCL 445.903, *et seq.* violated the Michigan Consumer Protection act by engaging in unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce as follows:

- (a) Representing that the rifle was new when it was deteriorated, altered, reconditioned, used or secondhand;
- (b) Representing that the rifle was of a particular standard, quality, or grade when in fact it was not fit for the use intended.

28. The Defendants breach of the Michigan Consumer Protection Act, MCL 445.901, *et seq.*, makes a them potentially liable to Plaintiff, Raymond Slaght, for his actual damages to include reasonable attorney fees, pursuant to MCL 445.911(2).

DAMAGES

29. Defendants' negligence and breach of implied and express warranties proximately caused the Plaintiff to suffer the following damages:

- (a) Pain and suffering;

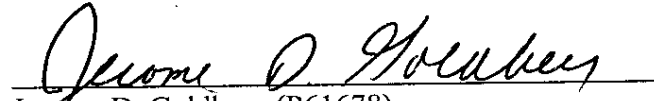
- (b) Past, present, and future medical bills;
- (c) Limitation of endurance;
- (d) Permanent, serious disfigurement to include scarring;
- (e) Confinement to the hospital;
- (f) Ear injuries;
- (g) Loss of wages in and earning capacity;
- (h) Multiple contusions; and
- (i) Incurrence of attorney fees.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands a judgment for damages exceeding Twenty-Five Thousand Dollars (\$25,000), plus interest, costs and attorney fees against the Defendants.

Respectfully submitted,

CHRISTOPHER S. VARJABEDIAN, P. C.



Jerome D. Goldberg (P61678)
Attorneys for Plaintiff

Dated: July 21, 2004

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