

COMMONWEALTH OF KENTUCKY
LESLIE CIRCUIT COURT
CIVIL BRANCH
CIVIL ACTION NO. 97-CI-00103

MAY 16 2 10 PM '97
LESLIE CIRCUIT COURT
DISTRICT COURT
BY: SAM C.C.
HYDENT, KY ARMS
PLAINTIFF,

SIDNEY WHITEHEAD,

vs. ANSWER BY CONNECTICUT VALLEY ARMS, INC.

CONNECTICUT VALLEY ARMS, INC., ET AL., DEFENDANTS.

Comes Defendant, Connecticut Valley Arms, Inc., and, for is Answer to Plaintiff's Complaint, states as follows:

FIRST DEFENSE

This Defendant admits so much of Plaintiff's Complaint as is contained therein in numerical paragraphs 2, 3 and 8; admits so much of numerical paragraph 7 which alleges Defendant, Connecticut Valley Arms, Inc. (hereinafter "CVA") is in the business of selling muzzleloading firearms, specifically the .50 caliber "Buckmaster muzzleloading rifle, serial number 61-13-033278-96 (hereinafter "the firearm"), and that the Defendant, CVA, further placed the firearm in the stream of commerce in the United States; states it is without information sufficient to form a belief as to the truth of so much of same as is contained in numerical paragraphs 1, 4, 5, 6, 12, 19, 20 and 21, and therefore denies the same, and specifically denies each and every allegation contained in said Complaint.

SECOND DEFENSE

On the occasion complained of in Plaintiff's Complaint, Plaintiff, Sidney Whitehead, was himself guilty of negligence, which negligence was the sole, or a substantial factor in causing his alleged injuries if any there were.

THIRD DEFENSE

This Defendant pleads and relies upon each and every defense and condition afforded by the provision of KRS 411.300-350 et seq., otherwise known as the Kentucky Products Liability Act, and affirmatively pleads and relies upon the same as a complete bar to the Plaintiff's claims.

FOURTH DEFENSE

Plaintiff's claim for punitive damages violates the 4th, 5th, 6th, 8th and 14th Amendments of the Constitution of the United States in that:

1. It is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff's satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases. KRS 411.184(2) fails to provide such a burden of proof.

2. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Defendants, which thereby violates the due process

clause of the Fourteenth Amendment of the United States Constitution.

3. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution.

4. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus, violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.

5. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the due process clause of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

6. The procedure pursuant to which punitive damages are awarded permits the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution.

7. This Defendant avers that if any award of punitive damages is rendered in this case, the same should be apportioned among the joint tort feasons in accordance with their respective degrees of culpability or wrongdoing. This Defendant avers that if a verdict is rendered against it in this case as a joint tort

feasor, and judgment entered against it for punitive damages which is not apportioned in accordance with their alleged culpability and/or wrongdoing, then such an award would violate the rights preserved to this Defendant under the Fifth and Fourteenth Amendments to the Constitution of the United States of America and deprive it of its property without due process of law.

8. This Defendant avers that if any award or punitive damages is rendered in this case, the same should be apportioned among the joint tort feasons in accordance with their respective degrees of culpability or wrongdoing. This Defendant avers that if a verdict is rendered against it in this case as a joint tort feason, and judgment entered against it for punitive damages which is not apportioned in accordance with their alleged culpability and/or wrongdoing, then such an award would violate the rights afforded to this Defendant under the Eighth Amendment and Fourteenth Amendment of the Constitution of the United States of America in that the same would amount to an excessive fine.

9. This Defendant avers that if any award of punitive damages is rendered in this case, the same should be apportioned among the joint tort feasons in accordance with their respective degrees of culpability or wrongdoing. This Defendant avers that if a verdict is rendered against it in this case as a joint tort feason, and judgment entered against it for punitive damages which is not apportioned in accordance with its alleged culpability and/or wrongdoing, then such an award would violate

the rights afforded to this Defendant under the Fourteenth Amendment to the Constitution of the United States of America in that it would amount to a denial of equal protection of the laws.

FIFTH DEFENSE

Plaintiff's claim for punitive damages violates Sections 2, 14 and 17 of the Constitution of the Commonwealth of Kentucky in that:

1. Such an award would result in absolute and arbitrary power over the property of this Defendant in violation of Section 2;
2. Such an award would deprive this Defendant of property without due process of law in violation of Section 14; and,
3. Such an award would constitute an excessive fine against this Defendant in violation of Section 17.

SIXTH DEFENSE

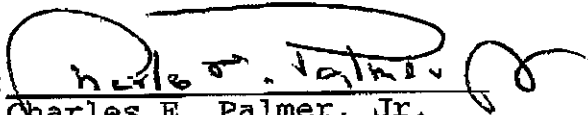
Plaintiff's Complaint violates the Kentucky Rules of Civil Procedure 20.01 in that Plaintiff joined various medical care providers as parties defendant rather than properly joining them as parties plaintiff since their alleged interests are subrogated to the Plaintiff.

SEVENTH DEFENSE

Defendant gives notice of and reserves the right to object to improper venue of this Court should discovery reveal that Plaintiff's injuries, if any there were, occurred in a different venue.

WHEREFORE, Defendant, Connecticut Valley Arms, Inc., demands that Plaintiff's Complaint against it be dismissed; that he take nothing thereby; that it recover its costs expended herein and for all other relief to which it may appear properly entitled.

STITES & HARBISON

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this 15th day of May, 1997

Debra S. Lamm
Attorney for Above Named Defendant