

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

APR 18 10 18 AM '97
BY: SAM PLAINTEIFF

SIDNEY WHITEHEAD

VS.

CONNECTICUT VALLEY ARMS, INC.

Process Agent: Hugh R. Powell, Jr.
1876 Independence Square
Suite E
Dunwoody, GA 30338

SERVE: SECRETARY OF STATE
Commonwealth of Kentucky
150 State Capitol
700 Capital Avenue
Frankfort, KY 40601-3493

AND

WAL-MART STORES, INC.

SERVE: C.T. Corporate Systems
Kentucky Home Life Building, Room 1102
Louisville, KY 40202

AND

UNIVERSITY OF KENTUCKY HOSPITAL

SERVE: Richard Plymale
Office of Legal Counsel
Room 2, Administration Building
Lexington, KY 40506

AND

MARY BRECKENRIDGE HEALTHCARE, INC.

SERVE: Deanna S. Severance
Hospital Drive
Hyden, Kentucky 41749

AND

KENTUCKY MEDICAL SERVICES FOUNDATION, INC.

SERVE: William Merritt
729 S. Limestone Street
Lexington, KY 40508

DEFENDANTS

COMPLAINT

Comes now the Plaintiff, Sidney Whitehead, by and through counsel, and for his complain against the Defendants states as follows:

1. That at all times complained of herein, the Plaintiff was a citizen and resident of Leslie County in the Commonwealth of Kentucky, his mailing address being HC 77, Box 702, Essie, KY 40827.

2. That at all times complained of herein, the Defendant, Connecticut Valley Arms, Inc., was a foreign corporation doing business within the Commonwealth of Kentucky, its agent for service of process being Hugh R. Powell, Jr., 1876 Independence Square, Suite E, Dunwoody, GA 30338; the Defendant, Connecticut Valley Arms, Inc., may be served with process through the Kentucky Secretary of State at 150 State Capitol, 700 Capital Avenue, Frankfort, KY 40601-3493.

3. That at all times complained of herein, the Defendant, Wal-Mart Stores, Inc., was a foreign corporation doing business within the Commonwealth of Kentucky, its agent for service

of process being C.T. Corporate Systems, Kentucky Home Life Building, Room 1102, Louisville, KY 40202.

4. That at all times complained of herein, the Defendant, University of Kentucky Hospital, was an entity doing business within the Commonwealth of Kentucky and located within the Commonwealth of Kentucky, its agent for service of process being Richard Plymale, Office of Legal Counsel, Room 2, Administration Building, Lexington, KY 40506.

5. That at all times complained of herein, the Defendant, Mary Breckenridge Healthcare, Inc., was a Kentucky corporation doing business within the Commonwealth of Kentucky, its agent for service of process being Deanna S. Severance, Hospital Drive, Hyden, Kentucky 41749.

6. That at all times complained of herein, the Defendant, Kentucky Medical Services Foundation, Inc., was a Kentucky corporation doing business within the Commonwealth of Kentucky, its agent for service of process being William Merritt, 729 S. Limestone Street, Lexington, KY 40508.

7. That the Defendant, Connecticut Valley Arms, Inc. (hereinafter "CVA"), is in the business of designing, manufacturing, testing and selling muzzleloading firearms, specifically the .50 caliber CVA "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. The Defendant, CVA, did, in fact, market, distribute and sell the firearm in question to the Defendant, Wal-Mart Stores, Inc.

8. The Defendant, Wal-Mart Stores, Inc., (hereinafter "Wal-Mart") is a foreign corporation doing business within the Commonwealth of Kentucky, is in the business of selling

firearms at retail to the consuming public, and did in fact sell the particular firearm which is the subject of this suit to the Plaintiff at the Defendant's place of business in Perry County, Kentucky.

9. The aforementioned firearm reached the Plaintiff in the condition in which it was manufactured, sold and distributed; at the time the firearm was sold or placed on the market, it was defectively designed, unreasonably dangerous, and inherently and intrinsically dangerous to the life and health of all foreseeable users, including the Plaintiff; the Defendants, CVA and/or Wal-Mart, knew or should have known of both the nature and extent of this danger, and knew or should have known that use of the firearm would likely result in severe injury because of the firearm's defective condition.

10. The injuries to the Plaintiff were caused and brought about by reason of the fact that the firearm was manufactured, sold, distributed and delivered in a defective condition, was unreasonably dangerous for the purposes for which it was intended, and was in a defective and unreasonably dangerous condition at the time of the manufacture, sale and distribution of the firearm by the Defendants, CVA and/or Wal-Mart; as a result, the Defendants, CVA and/or Wal-Mart, should be held strictly liable for the injuries sustained by the Plaintiff.

11. The Plaintiff alleges that this defective condition included, but was not limited to, the absence of adequate warnings that the firearm was extremely dangerous for users; further, that the firearm lacked features in its design and manufacture which would eliminate, reduce, or lessen the chances of malfunction, and/or eliminate, reduce or lessen the adverse effects resulting from malfunction; further, the Plaintiff states that the Defendants, CVA and/or Wal-Mart, sold this product in such a manner that it created an unreasonable risk of physical harm and injury, and that the firearm's warnings were completely inadequate and insufficient to warn against the inherent

dangers which were known to the Defendants, CVA and/or Wal-Mart, and/or which should have been known to the Defendants, CVA and/or Wal-Mart, these inherent dangers being capable of being reasonably foreseen by the Defendants, CVA and/or Wal-Mart, upon the expected usage of the firearm.

12. That at the time the firearm was purchased by the Plaintiff, Sidney Whitehead, the Defendant, CVA, made express and implied warranties that the firearm was merchantable and fit for the use to which it would be put; the sale of the firearm by the Defendant, CVA, was a breach of the express warranty created by affirmation and by description of the firearm; the sale of the firearm was a breach of the implied warranties that the firearm was merchantable and fit for the use to which it would be put, when, in fact, it was not merchantable and fit for the use to which it would be put; this breach of express and implied warranties occurred in violation of Kentucky Revised Statute 355.2-313.

13. The Plaintiff alleges that the Defendants, CVA and/or Wal-Mart, were grossly negligent in the design, manufacture, marketing and sale of the firearm; the Defendants, CVA and/or Wal-Mart, designed, manufactured, marketed and sold the firearm in an inherently dangerous and unstable condition, without proper warnings or instructions, and in a way that continued to allow and even encourage misunderstanding by the Plaintiff regarding the nature of the firearm and the risk involved in its use; by their conduct, the Defendants, CVA and/or Wal-Mart, exposed the Plaintiff to an unreasonable risk of serious harm or death.

14. The Plaintiff further alleges that the failure to warn of the inherent dangers of the firearm by the Defendants, CVA and/or Wal-Mart, and the intentional sale of the firearm by the Defendants, CVA and/or Wal-Mart, constitute unfair, false, misleading and deceptive acts and

practices in the conduct of trade and commerce within the purview of Kentucky Revised Statute 367.170, the Consumer Protection Act, which statute declares such acts to be unlawful.

15. The Plaintiff alleges that the aforementioned defects in the manufacture, design, assembly and marketing of the firearm by the Defendants, CVA and/or Wal-Mart, and/or the aforementioned breach of express and implied warranties by the Defendants, CVA and/or Wal-Mart, and/or the aforementioned negligence of the Defendants, CVA and/or Wal-Mart, and/or the aforementioned failure to warn on the part of the Defendants, CVA and/or Wal-Mart, and/or the aforementioned violation of the Consumer Protection Act by the Defendants, CVA and/or Wal-Mart, were the actual and proximate cause of the injuries sustained by the Plaintiff, Sidney Whitehead.

16. The Plaintiff alleges that on or about the 12th day of October, 1996 in Leslie County, Kentucky, the Plaintiff, Sidney Whitehead, while exercising due care without negligence of any kind, was using the firearm in a manner both invited and foreseeable by the Defendants, CVA and/or Wal-Mart, when the firearm malfunctioned, seriously injuring the Plaintiff.

17. The Plaintiff alleges that as a direct and proximate result of the above set forth acts and omissions to act on the part of the Defendants, CVA and/or Wal-Mart, the Plaintiff, Sidney Whitehead, has been damaged; the Plaintiff has suffered and will continue to suffer great pain and anguish; the Plaintiff has incurred and will continue to incur medical expenses; the Plaintiff has suffered a permanent impairment in his power to earn money; the Plaintiff has suffered a permanent impairment in his bodily functions; all to his damage in a sum far in excess of the minimum jurisdictional limits of the Leslie Circuit Court.

18. The Plaintiff further alleges that the Defendants, CVA and/or Wal-Mart, acted

toward the Plaintiff with oppression, fraud or malice as defined in KRS 411.184, and that therefore the Defendants, CVA and/or Wal-Mart are liable to respond in punitive damages to the Plaintiff.

19. The Defendant, University of Kentucky Hospital, may be claiming a lien against any proceeds that may be recovered by the Plaintiff from the Defendants, CVA and/or Wal-Mart, and that said Defendant, University of Kentucky Hospital, is called upon to set up whatever right, interest or claim it may have in or to any proceeds that may be recovered by the Plaintiff from the Defendants, CVA and/or Wal-Mart, or be forever barred.

20. The Defendant, Kentucky Medical Services Foundation, Inc., may be claiming a lien against any proceeds that may be recovered by the Plaintiff from the Defendants, CVA and/or Wal-Mart, and that said Defendant, Kentucky Medical Services Foundation, Inc., is called upon to set up whatever right, interest or claim it may have in or to any proceeds that may be recovered by the Plaintiff from the Defendants, CVA and/or Wal-Mart, or be forever barred.

21. The Defendant, Mary Breckenridge Healthcare, Inc., may be claiming a lien against any proceeds that may be recovered by the Plaintiff from the Defendants, CVA and/or Wal-Mart, and that said Defendant, Mary Breckenridge Healthcare, Inc., is called upon to set up whatever right, interest or claim it may have in or to any proceeds that may be recovered by the Plaintiff from the Defendants, CVA and/or Wal-Mart, or be forever barred.

WHEREFORE, the Plaintiff demands the following:

1. Judgment against the Defendants, CVA and Wal-Mart, jointly and severally, for all items of compensatory damages set forth above, in an amount in excess of the jurisdictional limits of this Court;

2. Judgment against the Defendants, CVA and Wal-Mart, jointly and severally, for punitive damages;

3. Judgment establishing the respective rights of the remaining Defendants in and to any damages received by the Plaintiff;

4. A trial by jury on all issues so triable;

5. Costs herein expended, including a reasonable fee for his attorneys;

5. Any and all other relief to which the Plaintiff may appear to be entitled.

EDMOND COLLETT, P.S.C.
P.O. Box 1810
Hyden, KY 41749
(606) 672-3400

and

GULLETT & COMBS
109 Broadway
P.O. Drawer 1039
Hazard, KY 41702
(606) 439-1373

BY:



ASA P. GULLETT, III
CO-COUNSEL FOR PLAINTIFF