

COMMONWEALTH OF KENTUCKY
LESLIE CIRCUIT COURT
CIVIL ACTION NO. 97-CI- 00239

SIDNEY WHITEHEAD

PLAINTIFF

VS.

DIKAR, S. COOP. LTDA

Urarte Kalea 26
Poligono Industrial San Lorenzo
20570 Bergara, Spain

AND

GENE SEARS SUPPLY COMPANY

P.O. Box 38
El Reno, Oklahoma 73036

SERVE:

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

SEP 16 3 02 PM '97
LESLIE CIRCUIT
DISTRICT COURT
BY: [Signature]
HYDEN, K. E. 1/99
D.O.

DEFENDANTS

COMPLAINT

Comes now the Plaintiff, by and through counsel, and for his Complaint states as follows:

1. The Plaintiff is a citizen and resident of Leslie County in the Commonwealth of Kentucky, his mailing address being HC 77, Box 702, Essie, Kentucky 40827.
2. The Defendant, Dikar, S. Coop. LTDA, (hereinafter "Dikar"), is a foreign corporation whose home office address is Urarte Kelea 26, Poligono Industrial San Lorenzo,

20570 Bergara, Spain.

3. The Defendant, Gene Sears Supply Company, is a foreign corporation whose home office address is P.O. Box 38, El Reno, Oklahoma 73036, and may be served with process through the Kentucky Secretary of State, Commonwealth of Kentucky, 150 State Capitol, 700 Capitol Avenue, Frankfort, Kentucky 40601.

4. The Defendant, Dikar, is a foreign corporation that is in the business of designing, manufacturing, testing and selling muzzleloading firearms, and did in fact design, and/or manufacture, and/or test, and/or sell the .50 caliber CVA "Buckmaster" muzzleloading rifle, serial number 61-13-033278-96, and knew or should have known that the firearm would be sold and distributed in the United States including the Commonwealth of Kentucky.

5. The Defendant, Gene Sears Supply Company, is in the business of selling, distributing, and/or manufacturing, and/or designing, and/or marketing muzzleloading firearms, specifically the .50 caliber CVA "Buckmaster" muzzleloading rifle, serial number 61-13-033278-96 (hereinafter "the firearm"), and did in fact sell, and/or distribute, and/or market the firearm.

6. The 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, Dikar and/or Gene Sears Supply Company, 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.

7. The injuries to the Plaintiff were caused and brought about by reason of the fact

that the forearm 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, Dikar and/or Gene Sears Supply Company; as a result, the Defendants, Dikar and/or Gene Sears Supply Co., should be held strictly liable for the injuries sustained by the Plaintiff.

8. The Plaintiff alleges that this defective condition included, but was not limited to, the absence of adequate warnings that the forearm 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, Dikar and/or Gene Sears Supply Company, sold the firearm 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, Dikar and/or Gene Sears Supply Company, and/or which should have been known to the Defendants, Dikar and/or Gene Sears Supply Company, these inherent dangers being capable of being reasonably foreseen by the Defendants, Dikar and/or Gene Sears Supply Company, upon the expected usage of the firearm.

9. That at the time the firearm was purchased by the Plaintiff, Sidney Whitehead, the Defendant, Dikar, 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, Dikar, was a breach of the express warranty created by affirmation and by description of the firearm; further,

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.

12. The Plaintiff alleges that the Defendants, Dikar and/or Gene Sears Supply Company, were grossly negligent in the design, manufacture, marketing and sale of the firearm; the Defendants, Dikar and/or Gene Sears Supply Company, designed, manufactured, marketed and sold the firearm in an inherently dangerous and unstable condition, without proper warning 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, Dikar and/or Gene Sears Supply Company, exposed the Plaintiff to an unreasonable risk of serious harm or death.

13. The Plaintiff further alleges that the failure to warn of the inherent dangers of the firearm by the Defendants, Dikar and/or Gene Sears Supply Company, and the intentional sale of the firearm by the Defendants, Dikar and/or Gene Sears Supply Company, 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.

14. The Plaintiff alleges that the aforementioned defects in the manufacture, design, assembly and marketing of the firearm by the Defendants, Dikar and/or Gene Sears Supply Company, and/or the aforementioned breach of express and implied warranties by the Defendants, Dikar and/or Gene Sears Supply Company, and/or the aforementioned negligence of the

Defendants, Dikar and/or Gene Sears Supply Company, and/or the aforementioned failure to warn on the part of the Defendants, Dikar and/or Gene Sears Supply Company, and/or the aforementioned violation of the Consumer Protection Act by the Defendants, Dikar and/or Gene Sears Supply Company, were the actual and proximate cause of the injuries sustained by the Plaintiff, Sidney Whitehead.

15. 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, Dikar and/or Gene Sears Supply Company, when the firearm malfunctioned, seriously injuring the Plaintiff.

16. 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, Dikar and/or Gene Sears Supply Company, 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 this honorable Court.

17. The Plaintiff further alleges that the Defendants, Dikar and/or Gene Sears Supply Company, acted toward the Plaintiff with oppression, fraud or malice as defined in KRS 411.184, and that therefore the Defendants, Dikar and/or Gene Sears Supply Company, are liable to respond in punitive damages to the Plaintiff.

WHEREFORE, the Plaintiff demands the following:

1. Judgment against the Defendants, Dikar and Gene Sears Supply Co., 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, Dikar and Gene Sears Supply Co., jointly and severally, for punitive damages;
3. A trial by jury on all issues so triable;
4. 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

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