

SCANNED 12112008 000000043

BYRON HAWKS and KIMBERLY HAWKS

No. 526921-A, CIVIL DOCKET

v.

FIRST JUDICIAL DISTRICT COURT

REMINGTON ARMS COMPANY, INC;
SPORTING GOODS PROPERTIES, INC.;
E. I. DU PONT DE NEMOURS AND COMPANY;
and WAL-MART STORES, INC.

CADDO PARISH, LOUISIANA

PETITION FOR DAMAGES

The Petition of **BYRON HAWKS AND KIMBERLY HAWKS**, residents of Louisiana, respectfully represent the following, to wit:

1.

At all times pertinent herein, Byron Hawks and Kimberly Hawks were married.

2.

Plaintiffs were at all times material to this action residents of Louisiana.

PARTIES DEFENDANT

3.

Made defendants herein are:

- a. Defendant, REMINGTON ARMS COMPANY, INC, is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case and may be served through The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801;
- b. Defendant, SPORTING GOODS PROPERTIES, INC., (hereinafter SGPI) is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at c/o Remington Arms Company, Inc., Tony Beldon, 870 Remington Ave., P. O. Box 700, Madison, N.C. 27025-0700;
- c. Defendant, E. I. DU PONT DE NEMOURS AND COMPANY, (hereinafter "DU PONT") is a foreign corporation, engaged directly or indirectly in the manufacturing, marketing, distribution and sale of firearms, including, but not limited to the firearm in issue in this case and may be served at Room 8042 Dupont Bldg. 1007 Market Street, Wilmington, DE 19898;
- d. Defendant, WAL-MART STORES, INC. (hereafter referred to as Wal-Mart) is a foreign corporation, authorized and doing business in the State of Louisiana who can be served through its registered agent for service of process, Corporation Service Company, 320 Somerulos St., Baton Rouge, Louisiana 70802-6129;
- e. Any other defendants, whose names are learned during the course of discovery to have had contributing responsibility in the production and marketing of the firearm in question; and
- f. Any successor or predecessor in business to any of the above.

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A. WOFF IV

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[Signature]

DEPUTY CLERK OF COURT

JURISDICTION OF THIS COURT

4.

Defendants are subject to the jurisdiction of this Honorable Court by reason of having committed a tort, in whole or in part, in this State.

5.

This Honorable Court has personal jurisdiction over the defendants, Remington Arms Company, Inc., Sporting Goods Properties, Inc., and E.I. du Pont de Nemours and Company pursuant to the Louisiana Long Arm Statute (La. R.S. 13:3201) with citation and service of process to be made in accordance therewith.

6.

Defendant, REMINGTON ARMS COMPANY, INC, is a foreign corporation with its principal place of business located at 870 Remington Drive, P. O. Box 700, Madison, North Carolina 27025-0700.

7.

Defendant, SPORTING GOODS PROPERTIES, INC, is a foreign corporation located at 870 Remington Drive, P. O. Box 700, Madison, North Carolina 27025-0700.

8.

Defendant, E.I. DU PONT DE NEMOURS AND COMPANY is a foreign corporation, which may be served at Room 8042 Dupont Building, 1007 Market Street, Wilmington, DE 19898.

9.

WAL-MART STORES, INC. is a foreign corporation authorized to do and doing business in the State of Louisiana, with Corporation Service Company, 320 Somerulos St., Baton Rouge, Louisiana 70802-6129, as its designated agent for service of process in the State of Louisiana.

10.

The hereinabove defendants are justly, legally, and jointly and severally indebted unto the Plaintiff by reason of the following, to wit:

FACTS OF ACCIDENT

11.

On or about December 14, 2007, BYRON HAWKS was hunting with a Remington Model 78 Sportsman rifle, bearing Serial number B6616101.

12.

The cartridge being used by Plaintiff was a Remington 30-06 Express Core-Lokt.

13.

The cartridge was purchased new by Plaintiff from Wal-Mart Stores, Inc. in Shreveport, Louisiana on November 12, 2007.

14.

The box of cartridges purchased from Wal-Mart and from which the cartridge in question came was labeled as having been manufactured by Remington.

15.

The cartridges purchased by Plaintiff were represented by Wal-Mart to be new, factory-loaded ammunition.

16.

The cartridge being used at the time of the accident in question was from a box of Remington Express Core-Lokt, 30-06, 180 gr. Cartridges.

17.

The plaintiff had no reason to know nor suspect that the shell was faulty.

18.

The box of ammunition from which Plaintiff was shooting was represented to have contained only Remington ammunition.

19.

Upon information and belief, at all times pertinent herein, the firearm in question was in as-manufactured condition and had not been materially altered or modified.

20.

Upon information and belief, at all times pertinent herein, the ammunition in question was in as-manufactured condition and had not been materially altered or modified.

21.

BYRON HAWKS fired his Remington Model 78 rifle on December 14, 2007.

22.

When Byron pulled the gun's trigger, the gun exploded sending powder, parts and fragments at the plaintiff, causing him to incur bodily injuries.

23.

The injuries were caused by a defective firearm.

24.

The injuries were caused by defective ammunition.

25.

The injuries were sustained due to either a defective firearm or due to defective ammunition or a combination of both.

26.

Plaintiff did not know and had no reason to suspect that the REMINGTON rifle and ammunition would discharge in such a manner under the aforementioned circumstances.

27.

At all times pertinent herein, Plaintiff handled the firearm in question in a reasonably safe manner.

28.

At all times pertinent herein, Plaintiff handled the ammunition in question in a reasonably safe manner.

29.

At all times pertinent herein, Plaintiff handled the firearm in question in a manner foreseeable and anticipated by defendants.

30.

At all times pertinent herein, Plaintiff handled the ammunition in question in a manner foreseeable and anticipated by defendants.

31.

Plaintiff did not know and had no reason to suspect that the REMINGTON rifle could or would fail under the aforementioned circumstances.

32.

Plaintiff did not know and had no reason to suspect that the ammunition could or would fail under the aforementioned circumstances.

33.

BYRON HAWKS has suffered general and special damages as a result of this incident.

FAULT OF THE DEFENDANTS REMINGTON, SGPI, AND DUPONT

34.

The injuries to BYRON HAWKS were caused by the unreasonably dangerous conditions and design features of the REMINGTON rifle and/or the Remington cartridges.

35.

The firearm was defective and unreasonably dangerous for normal or foreseeable use and handling conditions per the Louisiana Product Liability Act.

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36.

At all times pertinent herein plaintiff's conduct was foreseeable by defendants.

37.

The Remington defendants, individually and/or in combination with each other had an interest in and played a part in allowing the defective rifle to be sent to and/or remain in the market place and stream of commerce.

38.

The said firearm was designed, manufactured, constructed, fabricated, assembled, merchandised, advertised, promoted, sold and/or distributed by the Remington defendants, individually and/or in combination with each other, (hereinafter the Remington defendants) for use and general distribution and sale throughout the United States including and without limitation the State of Louisiana.

39.

DuPont manufactured the firearm in question.

40.

Sporting Goods Properties, Inc. manufactured the firearm in question.

41.

REMINGTON manufactured the firearm in question.

42.

The Remington defendants, individually and/or in combination with each other, could have predicted and anticipated the use and accident conditions (as alleged herein) with the use of reasonable care and proper safety engineering and design practices.

43.

With the use of reasonable effort and care, the Remington defendants, individually and/or in combination with each other could have included in the design, production, and sale of the product in question, reasonably feasible and available safety systems or devices so as to have prevented the injuries to BYRON HAWKS.

44.

At the time of the design, production, and sale of the product in question, alternative designs and systems were reasonably feasible and available with reasonable effort that would have eliminated or greatly reduced the risk of the accident in question.

45.

The Remington defendants, individually and/or in combination with each other, failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraph.

46.

At the time of the sale of the product in question, there were reasonably available safety and design concepts in existence that would have eliminated or greatly reduced the risks causing BYRON HAWKS's injuries if utilized in the product in question.

47.

The magnitude of the risks presented by the product in question under the accident circumstances as alleged herein outweighed utility of the products as sold.

48.

BYRON HAWKS did not appreciate the magnitude of the risk associated with the use of the firearm and under the accident conditions as alleged herein.

49.

The Remington defendants, individually and/or in combination with each other, failed to appreciate the magnitude of the risks of injury or death under the accident conditions as alleged herein causing the injuries to BYRON HAWKS.

50.

The Remington defendants, individually and/or in combination with each other failed to warn and make certain that all potential risks of failure of the product in question were known by the general American public, and particularly those in the position of the plaintiff.

51.

Upon information and belief, the Remington defendants, individually and/or in combination with each other failed to properly and fully test and inspect the firearm prior to releasing and marketing it to the public.

52.

The Remington defendants, individually and/or in combination with each other failed to properly analyze the design so as to determine, prior to production, distribution, and commercialization of the product, that it had hidden and unreasonable risks of accidental discharge during foreseeable or predictable handling conditions.

53.

The Remington defendants, individually and/or in combination with each other failed to recall the firearm in question and place public notices and warnings concerning the defective and ultra dangerous characteristics of the product so as to eliminate the risks causing the injuries to BYRON HAWKS.

54.

The Remington defendants, individually and/or in combination with each other failed to use reasonably available alternative safety designs and safety systems in the product in question.

55.

The Remington defendants, individually and/or in combination with each other failed to retro-fit and install reasonably available state-of-the-art accident prevention devices in the product.

56.

Remington defendants, individually and/or in combination with each other breached their duties and failed to take necessary steps to prevent and eliminate the risks in their firearms, and warn, advise, and give notice to the public of the risks inherent in the product in question.

57.

At the time of the production and commercialization of the firearm in question, there were reasonably available alternative safety designs and systems, which with the use of reasonable care and available alternative technology, could have been used to greatly reduce or prevent the risk of accidental discharge.

58.

Had reasonably feasible and available alternative designs and safety systems been used with the product in question, the risk of injury to and the injuries to BYRON HAWKS, under the accident circumstances described, would have been eliminated or greatly reduced.

59.

At the time of the sale and distribution of the product, it was reasonably feasible to have taken additional steps to make certain to a reasonable degree of probability that the user understood the degree of danger and avoided exposure to the risks presented by the products as designed and sold.

60.

The Remington defendants, individually and/or in combination with each other failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraphs, and such was a cause in fact and the proximate cause of the injuries to BYRON HAWKS.

61.

In addition to the above, Remington defendants, individually and/or in combination with each other were guilty of negligence and fault by having failed to:

- a. Anticipate the reasonably foreseeable and/or predictable uses or manners of use of the products in question;
- b. Take reasonably feasible steps to provide adequate instructions to the users and those exposed to the risks inherent in the products;
- c. Warn, instruct, and fully caution users of the full extent of the dangers inherent in the foreseeable and predictable misuse of the firearm in question, as well as the chance or risk that such dangers would manifest themselves in injury or death in the absence of extraordinary caution;
- d. To cause users to appreciate the risks inherent in the products in question;
- e. Provide feasible and reasonably practical alternative methods of use without substantial risks.

62.

The fault of the Remington defendants, individually and/or in combination with each other referenced in the preceding paragraphs was a cause in fact and the proximate cause of the injuries to BYRON HAWKS.

63.

If in fact the use employed by Plaintiff is claimed by the Remington defendants, individually and/or in combination with each other to be or constitute a "misuse" of the firearm, then the defendant(s) unreasonably failed to anticipate such misuse in order to take reasonable steps to reduce associated risks.

64.

The defendants improperly failed to anticipate that the plaintiff would or may well use the firearm and ammunition in a foreseeable and predictable manner, as he did, causing the risks inherent in the firearm to manifest themselves in the circumstances of his shooting.

65.

Upon information and belief, and notwithstanding notice of prior accidents similar to that made the subject matter of this litigation, the Remington defendants, individually and/or in combination with each other have still failed to retro-fit or install safety systems, guards, or devices designed and intended to eliminate or greatly reduce the risk of other shootings under the same or similar conditions as the shooting made the subject matter of this litigation.

66.

Reasonably feasible alternative and state-of-the-art designs and safety systems were available at the time the production of the product in question but were not used.

67.

The Remington defendants, individually and/or in combination with each other, consciously withheld and continue to withhold information relating to prior incidents, accidents and other information, which would have influenced the Plaintiff not to purchase this firearm.

68.

The injuries to BYRON HAWKS were caused by the unreasonably dangerous conditions and design features of the REMINGTON cartridges.

69.

The cartridges were defective and unreasonably dangerous for normal or foreseeable use and handling conditions per the Louisiana Product Liability Act.

70.

At all times pertinent herein plaintiff's conduct was foreseeable by defendants.

71.

Upon information and belief, the defendants, REMINGTON, had an interest in and played a part in allowing the defective shells to be sent to and/or remain in the market place and stream of commerce.

72.

The said shells were designed, manufactured, constructed, fabricated, assembled, merchandised, advertised, promoted, sold and/or distributed by the defendants, REMINGTON, individually and/or in combination herein, for use and general distribution and sale throughout the United States including and without limitation the State of Louisiana.

73.

REMINGTON ARMS COMPANY, INC. manufactured the cartridges in question.

74.

The defendants, REMINGTON, are guilty of gross negligence and a reckless disregard for safety and at fault also by having failed to adequately warn and instruct any and all potential and foreseeable persons exposed to the dangers of the product and the dangers in using the cartridges.

75.

With the use of reasonable effort and care, the defendants, REMINGTON, could have included in the design, production, and sale of the cartridges in question, reasonably feasible and available safety systems or devices so as to have prevented the injuries to BYRON HAWKS.

76.

At the time of the design, production, and sale of the ammunition in question, alternative designs and systems were reasonably feasible and available with reasonable effort that would have eliminated or greatly reduced the risk of the accident in question.

77.

REMINGTON failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraph.

78.

At the time of the sale of the ammunition in question, there were reasonably available safety and design concepts in existence that would have eliminated or greatly reduced the risks causing BYRON HAWKS's injuries if utilized in the ammunition in question.

79.

The magnitude of the risks presented by the ammunition in question under the accident circumstances as alleged herein outweighed utility of the products as sold.

80.

BYRON HAWKS did not appreciate the magnitude of the risk associated with the use of the cartridges and under the accident conditions as alleged herein.

81.

REMINGTON failed to warn and make certain that all potential risks of failure of the ammunition in question were known by the general American public, and particularly those in the position of the plaintiff.

82.

Upon information and belief, REMINGTON failed to properly and fully test and inspect the cartridges prior to releasing and marketing them to the public.

83.

REMINGTON failed to properly analyze the design so as to determine, prior to production, distribution, and commercialization of the product, that it had hidden and unreasonable risks of accidental discharge during foreseeable or predictable handling conditions.

84.

REMINGTON failed to recall the cartridges in question and place public notices and warnings concerning the defective and ultra dangerous characteristics of the ammunition so as to eliminate the risks causing the injuries to BYRON HAWKS.

85.

REMINGTON breached its duties and failed to take necessary steps to prevent and eliminate the risks in their cartridges and warn, advise, and give notice to the public of the risks inherent in the ammunition in question.

86.

At the time of the production and commercialization of the cartridges in question, there were reasonably available alternative safety designs and systems, which, with the use of reasonable care and available alternative technology, could have been used to greatly reduce or prevent the risk of explosion.

87.

At the time of the sale and distribution of the products, it was reasonably feasible to have taken additional steps to make certain to a reasonable degree of probability that the user understood the degree of danger and avoided exposure to the risks presented by the products as designed and sold.

88.

The defendants failed to take all reasonably feasible and practical steps to reduce the chance of injury or death as suggested by the preceding paragraphs, and such was a cause in fact and the proximate cause of the injuries to BYRON HAWKS.

89.

In addition to the above, the defendants were guilty of negligence and fault by having failed to:

- a. Anticipate the reasonably foreseeable and/or predictable uses or manners of use of the products in question;
- b. Take reasonably feasible steps to provide adequate instructions to the users and those exposed to the risks inherent in the products;
- c. Warn, instruct, and fully caution users of the full extent of the dangers inherent in the foreseeable and predictable misuse of the firearm in question, as well as the chance or risk that such dangers would manifest themselves in injury or death in the absence of extraordinary caution;
- d. To cause users to appreciate the risks inherent in the products in question;
- e. Provide feasible and reasonably practical alternative methods of use without substantial risks.

90.

The fault of the defendants REMINGTON referenced in the preceding paragraphs was a cause in fact and the proximate cause of the injuries to BYRON HAWKS.

91.

If in fact the use employed by Plaintiff is claimed by the defendant or defendants, REMINGTON ARMS COMPANY, INC., SGPI and/or DU PONT to be or constitute a "misuse" of the cartridges, then the defendant(s) unreasonably failed to anticipate such misuse in order to take reasonable steps to reduce associated risks.

92.

The defendants improperly failed to anticipate that the plaintiff would or may well use the cartridges in a foreseeable and predictable manner, as he did, causing the risks inherent in the cartridges to manifest themselves in the circumstances of his shooting.

93.

Defendants, REMINGTON ARMS COMPANY, INC. consciously withheld and continues to withhold information relating to prior incidents, accidents and other information, which would have influenced the Plaintiff not to purchase these cartridges.

94.

Upon information and belief, the plaintiff avers that the cartridges sold to BYRON HAWKS may have been defective and constituted a contributing, if not an exclusive, cause of the accident in question.

95.

Notwithstanding the same, the defendant REMINGTON ARMS COMPANY, INC. failed to notify and warn its customer, the plaintiff BYRON HAWKS, of the possibility and risk of defective and faulty REMINGTON ARMS COMPANY, INC. ammunition.

96.

Had the plaintiff, BYRON HAWKS, been given notice by REMINGTON ARMS COMPANY, INC. of the risk of faulty Remington cartridges for the rifle in question, the plaintiff BYRON HAWKS would not have accepted nor attempted to use the Remington cartridges at the time of the accident in question.

97.

In addition to a product liability cause of action pursuant to the Louisiana Product Liability Act, the Plaintiff additionally brings an action in redhibition for the manufacture and sale of products (firearm and/or ammunition) causing damage and known, or presumed to have been known, *juris et de jure* under Louisiana law to have contained vices and defects and for that reason the Plaintiff is also entitled to a return of the purchase price, plus

reasonable attorney's fees occasioned as a result of the manufacture and distribution of the defective rifle and ammunition in question.

FAULT OF THE DEFENDANT WAL-MART STORES, INC.

98.

Prior to the sale of cartridges in question, Defendant Wal-Mart did not ensure that the cartridges it sold were free from redhibitory and other dangerous vices and defects.

99.

Defendants committed other acts of fault as may be discovered and shown at the trial hereof.

100.

The fault and breaches of Defendants and the unreasonable risks and defects and vices in the cartridges in question as set forth above caused Plaintiffs' damages.

101.

Plaintiff is entitled to redhibition damages and a refund of the sales price Byron Hawks paid for the Remington Express Core-Lokt, 30-06, 180 gr. cartridges, as well as attorneys fees, compensatory damages and all other damages allowable by law.

102.

The box of ammunition from which Plaintiff was shooting was represented to have contained only Remington ammunition.

103.

Plaintiff believed he was buying new, factory-loaded Remington brand ammunition from Wal-Mart.

104.

If, in fact, the ammunition is found not to have been new, factory-loaded Remington ammunition and the cause of the incident, then Wal-Mart is liable *ex delicto* and *ex contractu* for having sold Plaintiff the wrong and improper ammunition.

DAMAGES CAUSED BY DEFENDANTS

105.

Due to Defendants' fault in causing the injuries to BYRON HAWKS, Plaintiffs, Byron Hawks and Kimberly Hawks have suffered and will suffer damages in the following, but not exclusive, particulars, to wit:

- a. Loss of enjoyment of life;
- b. Emotional distress;
- c. Pain and suffering;
- d. Disability;
- e. Loss of hearing;
- f. Loss of consortium;
- g. Other special damages, such as past medical bills;
- h. Any and all damages for the injuries to BYRON HAWKS as shall be determined to have been sustained and/or allowed by law.

106.

Because of the incident, Plaintiff sustained medical expenses in the amount of \$137.00.

107.

As a result of the incident, Plaintiff has sustained diagnoses of Tinnitus in the right ear and a bilateral high frequency sensorineural hearing loss with poorer sensitivity in the right ear.

108.

The aforementioned conditions continue even 10 months after the incident.

109.

The damages resulting to Plaintiff were occasioned and proximately caused by the faulty, defective, and unreasonably dangerous conditions and vices and defects of the firearm and/or ammunition manufactured, marketed, and sold by the defendants and/or the negligence of Defendant, Wal-Mart.

WHEREFORE PLAINTIFF PRAYS that a certified copy of the foregoing Petition be served upon the defendants, REMINGTON ARMS COMPANY, INC., SPORTING GOODS PROPERTIES, INC., E.I. DU PONT DE NEMOURS AND COMPANY and WAL-MART STORES, INC. and that the defendants, REMINGTON ARMS COMPANY, INC., SPORTING GOODS PROPERTIES, INC., E.I. DU PONT DE NEMOURS AND COMPANY and WAL-MART STORES, INC. be duly cited to appear and answer and after the necessary legal delays, requisites,

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MART STORES, INC. jointly and severally, for any and all damages as shall be determined to be just, fair, and reasonable under the circumstances, together with legal interest from date of judicial demand until paid, and for all costs of these proceedings.

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