

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

KYLE HAMILTON,

Plaintiff,

V.

BOWTECH,

Defendant.

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Civil Action No. 6:13-cv-0193

**PLAINTIFF'S ORIGINAL COMPLAINT**

TO THIS HONORABLE COURT:

Plaintiff Kyle Hamilton files this Complaint against Defendant BowTech and in support thereof would respectfully show as follows:

**I.**

**PARTIES**

1. Plaintiff Kyle Hamilton is a citizen of Texas and resides in Collin County, Texas.

2. Defendant BowTech is an Oregon corporation with a principal place of business located at 90554 Highway 99 North in Eugene, Oregon. Although this Defendant is engaging in business in the State of Texas, it does not maintain a regular place of business in Texas or a designated agent for service of process in this State.

Pursuant to Tex. Civ. Prac. & Rem. Code §17.044, this non-resident defendant is to

be served through the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701. Pursuant to Tex. Civ. Prac. & Rem. Code §17.045, by duplicate copies, the Texas Secretary of State shall mail a copy of the process to Defendant's registered agent: Nolin Barnes, 90554 Highway 99 North, Eugene Oregon 97402.

## **II.**

### **VENUE AND JURISDICTION**

1. Pursuant to 28 U.S.C. § 1332, jurisdiction is proper because there is diversity of citizenship among and between the parties to this civil action and the amount in controversy exceeds the minimum jurisdictional limits of this Court. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

2. Pursuant to 28 U.S.C. 1391, venue is proper in the this Court because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Eastern District of Texas. Both the accident itself and the sale of the product occurred in the Eastern District of Texas.

## **III.**

### **FACTS**

1. On August 25, 2012, Kyle Hamilton and his outdoorsmen-friends were at a deer camp and in the process of taking turns shooting at a target with a Stryker StrykeZone 380 crossbow. As Hamilton fired the Stryker crossbow, the bow string violently amputated the distal section of his left thumb and left Hamilton with a

permanent and serious injury.

2. The crossbow in question was designed, manufactured, and distributed by BowTech under the brand name Stryker.

3. At all times in question, the crossbow in question was substantially unchanged from its condition when sold and distributed by BowTech.

4. Hamilton was using the bow in away and manner entirely foreseeable to Defendant.

5. When the crossbow in question was designed and manufactured, BowTech already was aware that it was common for bow users to inadvertently place their thumb (or finger) in a position it could be struck by the bow strings. Defendant also knew that if a user's finger or thumb were placed above the flight rail or into the path of a moving bowstring, serious injury, including amputation, could be caused to the user's finger or thumb.

6. Prior to distribution of the crossbow in question, BowTech had knowledge that some crossbow users had suffered injury to their fingers or thumbs by unintentionally placing their fingers or thumb in the path of the moving bowstring while using the crossbow.

7. Alternative safer designs existed at the time this bow was sold by BowTech. Defendant itself has designed and manufactured crossbows which provide protection for hands and fingers by providing guards and/or larger grips and handles.

However, Defendant designed, manufactured, and sold the bow in question without these safeguards.

#### IV.

#### **STRICT LIABILITY CAUSE OF ACTION AGAINST BOWTECH**

1. Plaintiff adopts and re-alleges each paragraph above as if fully set forth herein.

2. Defendant was at the time of the occurrence and is now engaged in the business of designing, manufacturing, distributing, and selling crossbows, including the Stryker StrykeZone 380 crossbow in question.

3. The crossbow in question was unreasonably dangerous and defectively designed, manufactured, distributed, and marketed to foreseeable users, including the Plaintiff who used the crossbow in an ordinary and foreseeable manner, because the crossbow allowed entry of an operator's thumb into the path of the bowstring upon firing of the crossbow.

4. The defect described was a producing cause of the incident and the injuries to Kyle Hamilton, in that it directly and in natural and continuous sequence produced or contributed substantially to his injuries.

5. Defendant further impliedly warranted to the public in general and specifically to users of the product that the Stryker StrykeZone 380 crossbow was of a merchantable quality and was safe and fit for its intended purpose when used under

ordinary foreseeable conditions and in an ordinary foreseeable manner. Plaintiff relied upon these implied warranties to his detriment.

6. The foregoing acts and omissions by Defendant were a producing and/or proximate cause of Plaintiff's resulting damages.

## V.

### **NEGLIGENCE CAUSE OF ACTION AGAINST BOWTECH**

1. Plaintiff adopts and re-alleges each paragraph above as if fully set forth herein.

2. Defendant knew or, in the exercise of due care, should have known that the Stryker StrykeZone 380 crossbow would be used without inspection and would create a foreseeable and unreasonable zone of risk of harm to Stryker StrykeZone 380 crossbow users.

3. Defendant was under a duty to properly and adequately design, manufacture, assemble, test, inspect, label, provide adequate warnings for, package, distribute and sell the Stryker StrykeZone 380 crossbow in a reasonably safe condition so as not to present a danger to the users of the crossbow.

4. Defendant breached its duty by negligently designing, manufacturing, assembling, testing, inspecting, labeling, packaging, failing to warn, distributing and selling the Stryker StrykeZone 380 crossbow when it was not in a reasonably safe condition for foreseeable use, as follows:

- A. Defendant failed to equip the crossbow with a grip guard to protect a user from unintentional placement of his thumb in the path of the moving bowstring;
- B. Defendant failed to equip the crossbow with a shield to protect a user from unintentional placement of his thumb in the path of the moving bowstring;
- C. Defendant failed to equip the crossbow with a safety button to be depressed by thumb to protect a user from unintentional placement of his thumb in the path of the moving bowstring; and
- D. Defendant failed to equip the crossbow with an automatic cut off or safety guard that would prevent the crossbow from firing when it was being held in way that a user's thumb was in the path of the bowstring.
- E. Defendant failed to provide adequate and effective warnings to uses of the bow.

5. The negligence described above directly and proximately caused the injuries to Kyle Hamilton.

6. Defendant knew that accidents similar to the one in question had occurred; and Defendant, and others, had previously and subsequently designed and manufactured crossbows which provide protection for fingers and thumbs through alternative designs, such as the use of guards or larger hand grips. Despite such knowledge, BowTech designed and manufactured the subject crossbow to be used without a proper safety guard, grip, shield, or handle, and without adequate warnings to users.

7. Defendant's acts and omissions, under these circumstances, constituted gross negligence.

## VI.

### **DAMAGES TO PLAINTIFF**

1. As a result of the incident described herein, Plaintiff's left thumb was partially amputated. Plaintiff has incurred medical expenses in the past and in all reasonable probability such medical expenses will continue in the future.

2. Plaintiff has experienced mental anguish and emotional distress in the past and in all reasonable probability such mental anguish and emotional distress will continue in the future.

3. Plaintiff has experienced physical pain and suffering in the past and in all reasonable probability such physical pain and suffering will continue in the future.

4. Plaintiff has experienced physical disfigurement in the past and in all reasonable probability will suffer disfigurement in the future.

5. Plaintiff has experienced physical impairment in the past and in all reasonable probability will suffer impairment in the future.

6. Plaintiff has suffered lost wages in the past and in all reasonable probability such lost earning capacity will continue in the future.

**VII.**

**CLAIM FOR EXEMPLARY DAMAGES**

Plaintiff hereby makes his claim for exemplary damages against Defendant in accordance with Texas Civil Practice & Remedies Code § 41.001 *et seq.*

**VIII.**

**CLAIM FOR PREJUDGEMENT AND POST-JUDGMENT INTEREST**

Plaintiff herein claims interest in accordance with law.

**IX.**

**JURY DEMAND**

Plaintiff requests a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant BowTech be cited to appear and answer herein, and upon final hearing of this cause, Plaintiff have judgment against Defendant for the damages described herein, for costs of suit, pre-judgment and post judgment interest as permitted by law, and for such other relief to which Plaintiff may be justly entitled.



Respectfully submitted,

TURLEY LAW FIRM

A handwritten signature in black ink, appearing to read "Windle Turley", is written over a horizontal line.

Windle Turley  
State Bar No. 20304000

T Nguyen  
State Bar No. 24051116  
6440 North Central Expressway  
1000 Turley Law Center  
Dallas, Texas 75206  
Telephone No. 214/691-4025  
Telecopier No. 214/361-5802

ATTORNEYS FOR PLAINTIFF