

**IN THE CIRCUIT COURT OF CUMBERLAND COUNTY
AT CROSSVILLE TENNESSEE**

JOHNATHAN BEUTTEL and LaDEANA
GAMBILL, as Co-Personal Representatives of the
Estate of LAUREN A. BEUTTEL, deceased, and
CINDY JANE BEUTTEL, as Co-Personal
Representatives of the Estate of JACOB D.
DAVISON, deceased,

CASE NO:

JURY DEMANDED

Plaintiffs,

v.

VALMONT INDUSTRIES, INC., a foreign
corporation; VALMONT HIGHWAY, a foreign
corporation; ARMORFLEX INTERNATIONAL
LIMITED, a foreign corporation; LINDSAY
CORPORATION, a foreign corporation; LINDSAY
TRANSPORTATION SOLUTIONS SALES &
SERVICE, LLC, a foreign company; BARRIER
SYSTEMS, a foreign corporation; and
CUMBERLAND GUARDRAIL, INC., a Tennessee
corporation,

Defendants.

_____ /

COMPLAINT

Plaintiffs, JOHNATHAN BEUTTEL and LaDEANA GAMBILL, as Co-Personal Representatives of the Estate of LAUREN A. BEUTTEL, deceased, and CINDY JANE BEUTTEL, as Personal Representative of the Estate of JACOB D. DAVISON, deceased, now appear, by and through counsel, in this case, which arises out of the injuries and wrongful death suffered by LAUREN A. BEUTTEL and JACOB D. DAVISON in a traffic collision on June 29, 2016, in Cumberland County, Tennessee, on account of the wrongful

and negligent conduct by and/or attributable to the Defendants herein; for cause of action against these Defendants, Plaintiffs state the following contentions:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff JOHNATHAN BEUTTEL is a citizen and resident of Johnson City, Washington County, Tennessee, residing at 3610 Cimarron Drive, Johnson City, Tennessee 37601.

2. Plaintiff LaDEANA GAMBILL is a citizen and resident of Gastonia, Gaston County, North Carolina, residing at 3625 English Garden Drive, Gastonia, North Carolina 28056.

3. Lauren Beuttel, deceased, was the natural daughter of Johnathan Beuttel and LaDeana Gambill. Lauren was born on August 11, 1994 and died on June 29, 2016.

4. JOHNATHAN BEUTTEL and LaDEANA GAMBILL, as surviving parents of Lauren Beuttel, deceased, are duly appointed as the Co-Personal Representatives of her Estate. (Letter of Administration is attached hereto as "Exhibit A.")

5. The potential beneficiaries of the Estate of Lauren Beuttel in this wrongful death action and the relationship of each to the decedent are as follows:

- a. Johnathan Beuttel, surviving parent;
- b. LaDeana Gambill, surviving parent; and
- c. The Estate of Lauren Beuttel.

6. Plaintiff, CINDY JANE BEUTTEL is a citizen and resident of Johnson City, Washington County, Tennessee, residing at 3610 Cimarron Drive, Johnson City, Tennessee 37601. Jacob D. Davison, deceased, was the natural son of Cindy Jane Beuttel. Jacob was born on January 9, 1998 and died on June 29, 2016.

7. CINDY JANE BEUTTEL is the surviving parent of Jacob D. Davison, deceased, and is duly appointed as the Personal Representative of his Estate. (Letter of Administration is attached hereto as "Exhibit B.")

8. The potential beneficiaries of the Estate of Jacob D. Davison in this wrongful death action and the relationship of each to the decedent are as follows:

- a. Cindy Jane Beuttel, surviving parent;
- b. Donald Vernan Davison, surviving parent; and
- c. The Estate of Jacob D. Davison.

9. Defendant VALMONT INDUSTRIES, INC., organized in the State of Nebraska, which at all relevant times was doing business in the jurisdiction of this Honorable Court. Valmont Industries is a foreign for-profit corporation organized and existing under the laws of Nebraska with its principal place of business at One Valmont Plaza, Omaha, Nebraska 68154-5215. Valmont Industries is subject to personal jurisdiction in the state of Tennessee because it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs' action arises from Valmont Industries transacting business in Tennessee or contracting to supply services or things in Tennessee; or committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Valmont Industries while, at or about the time of the injury, Valmont Industries was engaged in solicitation or service activities within Tennessee, or products, materials, or things processed, serviced, or manufactured by Valmont Industries were used or consumed within Tennessee in the ordinary course of commerce, trade, or use, for which Valmont Industries derived substantial revenue. (T. C. A. § 20-2-223)

10. In 2013, Defendant Valmont Industries acquired Defendant Armorflex International Limited and its products, including the X-LITE guardrail end terminals involved in the accident at issue in this lawsuit. This acquisition amounted to a merger or de facto merger wherein liability for defects associated with the subject guardrail system was assumed by Valmont.

11. Valmont Industries designs, develops, manufactures, tests, markets, promotes, advertises, distributes, sells, and/or participates in governmental approval processes of guardrail systems installed in Tennessee and throughout the United States, including the subject guardrail and end terminal. Valmont Industries uses the registered trademark name "X-LITE" to identify its unique and patented highway guardrail end terminals. The X-LITE can be used at the termination of flexible barriers on the shoulder of a roadway or in the median.

12. Defendant VALMONT HIGHWAY, a subsidiary of Valmont Industries, Inc., is a foreign for-profit corporation organized and existing under the laws of Australia with its principal place of business at 57-65 Airds Road, Minto NSW 2566 Australia. Valmont Highway is subject to personal jurisdiction in the state of Tennessee because it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs' action arises from Valmont Highway transacting business in Tennessee or contracting to supply services or things in Tennessee; or committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Valmont Highway while, at or about the time of the injury, Valmont Highway was engaged in solicitation or service activities within Tennessee, or products, materials, or things processed, serviced, or manufactured by Valmont Highway were used or consumed within

Tennessee in the ordinary course of commerce, trade, or use, for which Valmont Highway derived substantial revenue. (T. C. A. § 20-2-223)

13. Valmont Highway, designs, develops, manufactures, tests, markets, promotes, advertises, distributes, sells, and/or participates in governmental approval processes of guardrail systems installed in Tennessee and throughout the United States, including the subject guardrail and end terminal. Valmont Highway uses the registered trademark name “X-LITE” to identify its unique and patented highway guardrail end terminals. The X-LITE can be used at the termination of flexible barriers on the shoulder of a roadway or in the median.

14. Defendant ARMORFLEX INTERNATIONAL LIMITED (“hereinafter Armorflex”), a subsidiary of Valmont Industries, Inc., is a foreign for-profit corporation organized and existing under the laws of New Zealand with its principal place of business at 8 Paul Matthew Road, Auckland 0632, New Zealand. Armorflex was acquired by Valmont Industries Inc., in 2013. Armorflex is subject to personal jurisdiction in the state of Tennessee because it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs’ action arises from Armorflex transacting business in Tennessee or contracting to supply services or things in Tennessee; or committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Armorflex while, at or about the time of the injury, Armorflex was engaged in solicitation or service activities with in Tennessee, or products, materials, or things processed, serviced, or manufactured by Armorflex were used or consumed within Tennessee in the ordinary course of commerce, trade, or use, for which Armorflex derived substantial revenue. (T. C. A. § 20-2-223)

15. Armorflex designs, develops, manufactures, tests, markets, promotes, advertises, distributes, sells, and participates in governmental approval processes of guardrail systems installed in Tennessee and throughout the United States, including the subject guardrail and end terminal. Armorflex uses the registered trademark name "X-LITE" to identify its unique and patented highway guardrail end terminals. The X-LITE can be used at the termination of flexible barriers on the shoulder of a roadway or in the median. Armorflex holds the patent on the X-LITE.

16. Defendant LINDSAY CORPORATION (hereinafter "Lindsay Corp") is a foreign corporation, organized in the State of Delaware, which at all relevant times was doing business in the jurisdiction of this Honorable Court. Lindsay Corp's principal place of business is located at 222 North 111th Street, Omaha, Nebraska 68164. Lindsay Corp is subject to personal jurisdiction in the state of Tennessee because it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs' action arises from Lindsay Corp transacting business in Tennessee or contracting to supply services or things in Tennessee; committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Lindsay Corp while, at or about the time of the injury, Lindsay Corp was engaged in solicitation or service activities within Tennessee, or products, materials, or things processed, serviced, or manufactured by Lindsay Corp were used or consumed within Tennessee in the ordinary course of commerce, trade, or use, for which Lindsey Corp derived substantial revenue. (T. C. A. § 20-2-223)

17. Lindsay Corp designs, develops, manufactures, tests, markets, promotes, advertises, distributes, sells, and participates in governmental approval processes of

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guardrail systems installed in Tennessee and throughout the United States, including the subject guardrail and end terminal. Lindsay Corp. uses the registered trademark name “X-LITE” to identify its unique and patented highway guardrail end terminals. The X-LITE can be used at the termination of flexible barriers on the shoulder of a roadway or in the median. Lindsay Corp. holds the license and the trademark to the patented X-LITE.

18. Defendant LINDSAY TRANSPORTATION SOLUTIONS SALES & SERVICE, INC. (hereinafter “Lindsay TSSS”) is a foreign corporation, organized in the State of California, and is a wholly owned subsidiary and/or operational unit or division of Lindsay Corp, which at all relevant times was doing business in the jurisdiction of this Honorable Court. Lindsay TSSS’s principal place of business is located at 180 River Road, Rio Vista, California 94571. Lindsay TSSS is subject to personal jurisdiction in the state of Tennessee because it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs’ action arises from Lindsay TSSS transacting business in Tennessee or contracting to supply services or things in Tennessee; or committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Lindsay TSSS while, at or about the time of the injury, Lindsay TSSS was engaged in solicitation or service activities with in Tennessee, or products, materials, or things processed, serviced, or manufactured by Lindsay TSSS were used or consumed within Tennessee in the ordinary course of commerce, trade, or use, for which Lindsey Corp derived substantial revenue. (T. C. A. § 20-2-223).

19. Lindsay TSSS designs, develops, manufactures, tests, markets, promotes, advertises, distributes, sells, and participates in governmental approval processes of guardrail systems installed in Tennessee and throughout the United States, including the

subject guardrail and end terminal. Lindsay TSSS uses the registered trademark name “X-LITE” to identify its unique and patented highway guardrail end terminals. The X-LITE can be used at the termination of flexible barriers on the shoulder of a roadway or in the median.

20. Defendant BARRIER SYSTEMS, INC., (hereinafter “Barrier Systems”) is a foreign corporation, organized in the State of California, and is a wholly owned subsidiary and/or operational unit or division of Lindsay Corp or Lindsay TSSS, which at all relevant times was doing business in the jurisdiction of this Honorable Court. Barrier Systems’s principal place of business is located at 180 River Road, Rio Vista, California 94571. Barrier Systems is subject to personal jurisdiction in the state of Tennessee because it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs’ action arises from Barrier Systems transacting business in Tennessee or contracting to supply services or things in Tennessee; or committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Barrier Systems while, at or about the time of the injury, Barrier Systems was engaged in solicitation or service activities with in Tennessee, or products, materials, or things processed, serviced, or manufactured by Barrier Systems were used or consumed within Tennessee in the ordinary course of commerce, trade, or use, for which Barrier Systems derived substantial revenue. (T. C. A. § 20-2-223)

21. Barrier Systems designs, develops, manufactures, tests, markets, promotes, advertises, distributes, sells, and participates in governmental approval processes of guardrail terminals in Tennessee and throughout the United States, including the subject guardrail and end terminal. The X-LITE can be used at the termination of flexible barriers on the shoulder of a roadway or in the median.

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22. Defendant CUMBERLAND GUARDRAIL, INC. [hereinafter "Cumberland"] is a Tennessee for-profit corporation, which at all relevant times was doing business in the jurisdiction of this Honorable Court. Cumberland's principal place of business is located at 478 N. Grove Street, Pikeville, Tennessee 37367. Cumberland is subject to personal jurisdiction in the state of Tennessee because it is a Tennessee citizen; it is engaged in substantial and not isolated activity within the state of Tennessee; and Plaintiffs' action arises from Cumberland transacting business in Tennessee or contracting to supply services or things in Tennessee; or committing a tortious act within Tennessee; or causing injury to persons or property within Tennessee arising out of an act or omission by Cumberland while, at or about the time of the injury, Cumberland was engaged in solicitation or service activities within Tennessee, or products, materials, or things processed, or serviced by Cumberland were used or consumed within Tennessee in the ordinary course of commerce, trade, or use, for which Cumberland derived substantial revenue. (T. C. A. § 20-2-223)

23. Cumberland maintains, inspects, and/or installs guardrail terminals and end terminals in Tennessee, including the subject guardrail and end terminal.

24. VALMONT INDUSTRIES, INC.; VALMONT HIGHWAY; ARMORFLEX INTERNATIONAL LIMITED; LINDSAY CORPORATION; LINDSAY TRANSPORTATION SOLUTIONS SALES & SERVICE, LLC; and BARRIER SYSTEMS are referred to as collectively "Lindsay" or "Lindsay Defendants."

25. Jurisdiction and venue are proper in this Honorable Court because Cumberland County is the county in which the subject accident giving rise to this Complaint took place.

ALLEGATIONS COMMON TO ALL COUNTS

26. On or about June 29, 2016, on Interstate 40 near mile marker 315.75 in Cumberland County, Tennessee, Jacob Davison was the driver of and Lauren Beuttel was a rear seated passenger in a 2004 Toyota Solara, Vehicle Identification Number ("VIN") 4T1CA30P44U016415, Tennessee License Number DA5HT.

27. At that time and place, the 2004 Toyota was traveling eastbound on I-40, within the speed limit, when it left the roadway off the left shoulder into the median and immediately thereafter, the left front of the Toyota collided with the X-LITE guardrail end terminal that bordered I-40.

28. During the collision, the X-LITE end terminal and rail system failed to perform its intended safety function and purpose due to a defect(s) with its design, manufacturing, and/or warnings. Specifically, the X-LITE guardrail failed to properly perform/telescope upon impact. As a result, when the X-LITE end terminal was impacted by the Toyota, it was not able to maintain its integrity and stop the W-beams, thus allowing the W-beams to pierce through the Toyota's front fender, cowl, and floor board and enter its driver's side occupant compartment. Further, the W-beams traveled through the occupant compartment to the trunk area before turning and re-entering the occupant compartment.

29. During the collision, two W-beams penetrated the occupant compartment of the vehicle where Jacob Davison and Lauren Beuttel were sitting, and violently struck both Mr. Davison and Ms. Beuttel, causing each to suffer fatal injuries.

30. In the alternative, the X-LITE guardrail failed to perform as intended during the collision because it was improperly installed by Cumberland due to the Lindsay Defendants' failure to provide adequate installation and/or maintenance instructions.

COUNT I – NEGLIGENCE AGAINST THE LINDSAY DEFENDANTS

31. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 30 as if fully set forth herein:

32. The Lindsay Defendants owed a duty of reasonable care in the design development, testing, manufacture, assembly, inspection, marketing, distribution, promotion, training, advertisement and sale of the Subject Guardrail so as to avoid exposing Plaintiffs to unnecessary and unreasonable risks.

33. The Lindsay Defendants breached that duty in one or more of the following ways:

- a. By negligently failing to use due care in the design, development, manufacture, assembly, testing, inspection, marketing, promotion, training, distribution, advertising, sale, or processing of the Subject Guardrail and its component parts, in order to avoid the aforementioned risks to individuals;
- b. By failing to adequately warn foreseeable purchasers, installers, and end users of the unreasonable dangerous and defective condition(s) of the X-LITE end terminal, despite the fact that they knew or should have known of the unreasonably dangerous condition(s);
- c. By failing to disclose known problems and defects;
- d. By marketing the X-LITE as safe;
- e. By failing to adequately provide proper and clear installation, repair, maintenance, and/or instruction manuals, and failing to provide adequate warnings;

- f. By failing to comply with reasonable and necessary guidelines, including those of the Department of Transportation, the Federal Highway Administration, and/or the National Cooperative Highway Research Program (NCHRP);
- g. By failing to design and/or manufacture the X-LITE end terminal according to the specifications and approved by the Department of Transportation, the Federal Highway Administration, and/or the NCHRP;
- h. By failing to make timely corrections to the design of the subject guardrail to correct the guardrail system;
- i. By failing to adequately identify and mitigate the hazards associated with the guardrail system in accordance with good engineering practices;
- j. By failing to adequately test the subject guardrail system, including the head and rail system, to ensure it provided foreseeable owners and passengers of the motoring public with reasonable safety in foreseeable impacts;
- k. By manipulating, misrepresenting, and/or concealing testing data pertaining to the subject guardrail system;
- l. By failing to disclose known problems and defects;
- m. By failing to meet or exceed internal corporate guidelines;
- n. By failing to recall the guardrail system or, alternatively, retrofitting the guardrail system to provide reasonable safety for the motoring public; and
- o. By failing to recall the X-LITE end terminal to enhance safety.

34. As a direct and proximate result of the Lindsay Defendants negligence, Lauren Beuttel suffered fatal injuries and the Defendants are responsible for her death and damages as set forth below:

- a. Johnathan Beuttel, the surviving parent of Lauren Beuttel, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law;
- b. LaDeana Gambill, the surviving parent of Lauren Beuttel, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law; and
- c. The Estate of Lauren Beuttel has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

35. As a direct and proximate result of the Lindsay Defendants' negligence, Jacob Davison suffered fatal injuries and the Defendants are responsible for his death and damages as set forth below:

- a. Cindy Jane Beuttel, the surviving parent of Jacob Davison, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law;
- b. Donald Vernan Davison, the surviving parent of Jacob Davison, deceased, has suffered and will continue to suffer mental and physical

anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law; and

- c. The Estate of Jacob Davison has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

WHEREFORE, Plaintiffs, JOHNATHAN BEUTTEL and LaDEANA GAMBILL, as the Co-Personal Representatives of the Estate of LAUREN A. BEUTTEL, deceased, and CINDY JANE BEUTTEL, as Personal Representative of the Estate of JACOB D. DAVISON, deceased, for the benefit of the respective survivors and Estates, demand judgment for compensatory damages and costs against Defendants, VALMONT INDUSTRIES, INC.; VALMONT HIGHWAY; ARMORFLEX INTERNATIONAL LIMITED; LINDSAY CORPORATION; LINDSAY TRANSPORTATION SOLUTIONS SALES & SERVICE, LLC; and BARRIER SYSTEMS.

COUNT II- STRICT LIABILITY AGAINST THE LINDSAY DEFENDANTS

36. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 30 as if fully set forth herein.

37. This is a Count for strict liability against the Lindsay Defendants.

38. At all times material to this cause of action, the Lindsay Defendants were in the business of, and gained profits from, the design development, testing, manufacture, assembly, inspection, marketing, distribution, promotion, advertisement, and/or sale of X-LITE guardrail system through the stream of commerce.

39. At all times material to this cause of action, the subject Guardrail system was unreasonably dangerous and defective because:

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- a. The Lindsay Defendants failed to use due care in the design, development, manufacture, assembly, testing, inspection, marketing, promotion, distribution, advertising, sale, and/or processing of the Subject Guardrail and its component parts, in order to avoid the aforementioned risks to individuals;
- b. The Lindsay Defendants failed to adequately warn foreseeable purchasers, installers, and end users of the unreasonable dangerous and defective condition(s) of the X-LITE end terminal, despite the fact that they knew or should have known of the unreasonably dangerous condition(s);
- c. The Lindsay Defendants failed to disclose known problems and defects;
- d. The Lindsay Defendants marketed the X-LITE as safe;
- e. The Lindsay Defendants failed to adequately provide proper and clear installation, maintenance, and repair instruction manuals, and failed to provide adequate warnings;
- f. The Lindsay Defendants failed to comply with reasonable and necessary guidelines, including those of the Department of Transportation, the Federal Highway Administration, and the NCHRP;
- g. The Lindsay Defendants failed to design and/or manufacture the X-LITE end terminal according to the specifications and approved the Department of Transportation, the Federal Highway Administration, and/or the NCHRP;
- h. The Lindsay Defendants failed to make timely corrections to the design of the subject guardrail to correct the guardrail system;

- i. The Lindsay Defendants failed to adequately identify and mitigate the hazards associate with the guardrail system in accordance with good engineering practices;
- j. The Lindsay Defendants failed to adequately test the subject guardrail system, including the head and rail system to ensure it provided foreseeable owners and passengers of the motoring public with reasonable safety in foreseeable impacts;
- k. The Lindsay Defendants manipulated, misrepresented, and/or concealed testing data pertaining to the subject guardrail system;
- l. The Lindsay Defendants failed to disclose known problems and defects;
- m. The Lindsay Defendants failed to meet or exceed internal corporate guidelines;
- n. The Lindsay Defendants failed to recall the guardrail system or, alternatively, retrofit the guardrail system to provide reasonable safety for the motoring public; and
- o. The Lindsay Defendants failed to recall the X-LITE end terminal to enhance safety.

40. The Lindsay Defendants designed, developed, manufactured, assembled, tested, inspected, marketed, promoted, distributed, advertised, sold, and/or processed the guardrail system and/or its component parts that is the subject of this litigation with unintended and unreasonably dangerous defects, which unintended and unreasonably dangerous defects were present in the guardrail system and/or its component parts when

the Defendants placed the guardrail system and/or its component parts into the stream of commerce.

41. The subject guardrail did not undergo any material change or alteration from the time of sale through, up to and including, the time of the aforementioned crash.

42. As a direct and proximate result of the Lindsay Defendants negligence, Lauren Beuttel suffered fatal injuries and the Defendants are responsible for her death and damages as set forth below:

- a. Johnathan Beuttel, the surviving parent of Lauren Beuttel, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law;
- b. LaDeana Gambill, the surviving parent of Lauren Beuttel, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law; and
- c. The Estate of Lauren Beuttel has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

43. As a direct and proximate result of the Lindsay Defendants' negligence, Jacob Davison suffered fatal injuries and the Defendants are responsible for his death and damages as set forth below:

- a. Cindy Jane Beuttel, the surviving parent of Jacob Davison, deceased, has suffered and will continue to suffer mental and physical anguish, loss of

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society and companionship, and all other damages and expenses allowed under Tennessee law;

- b. Donald Vernan Davison, the surviving parent of Jacob Davison, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law; and
- c. The Estate of Jacob Davison has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

WHEREFORE, Plaintiffs, JOHNATHAN BEUTTEL and LaDEANA GAMBILL, as the Co-Personal Representative of the Estate of LAUREN A. BEUTTEL, deceased, and CINDY JANE BEUTTEL, as the Personal Representative of the Estate of JACOB D. DAVISON, deceased, for the benefit of the respective survivors and Estates demand judgment for compensatory damages and costs against Defendants, VALMONT INDUSTRIES, INC.; VALMONT HIGHWAY; ARMORFLEX INTERNATIONAL LIMITED; LINDSAY CORPORATION; LINDSAY TRANSPORTATION SOLUTIONS SALES & SERVICE, LLC; and BARRIER SYSTEMS.

COUNT III: NEGLIGENCE OF CUMBERLAND GUARDRAIL

44. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 43 as if fully set forth herein.

45. Defendant Cumberland contracted with the Tennessee Department of Transportation ("TDOT") to complete TDOT projects of adding, installing, inspecting,

maintaining, repairing, replacing, and/or overseeing the subject guardrail on I-40 in Cumberland County, Tennessee.

46. Cumberland had a duty to properly install, inspect, maintain, repair, monitor, and/or oversee such projects in a manner so as to protect individuals such as Lauren Beuttel and Jacob Davison from unnecessary and unreasonable risks.

47. Cumberland knew or should have known by the exercise of reasonable care that the Guardrail was not properly installed and secured such that upon impact at highway speed, it would separate allowing for a failure of the Guardrail system and thus allow intrusion of the guardrail into the subject vehicle.

48. Cumberland breached its duty in one of more of the following ways:

- a. Failing to properly install, construct, maintain, repair, monitor, and/or inspect the subject Guardrail/X-LITE end terminal;
- b. Failing to discover the hazardous and unsafe condition of the subject Guardrail/X-LITE end terminal;
- c. Failing to correct the hazardous and unsafe condition of the subject Guardrail/X-LITE end terminal; and
- d. Failing to ensure its agents, subcontractors, and/or employees properly installed, constructed, maintained, repaired and/or inspected the subject Guardrail/X-LITE end terminal.

49. Cumberland's acts and/or omissions created an unreasonable risk of injuries to vehicle occupants and the motoring public, including Lauren Beuttel and Jacob Davison.

50. As a direct and proximate result of Cumberland's negligence, Lauren Beuttel suffered fatal injuries and the Defendant is responsible for her death and damages as set forth below:

- a. Johnathan Beuttel, the surviving parent of Lauren Beuttel, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law;
- b. LaDeana Gambill, the surviving parent of Lauren Beuttel, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law;
- c. The Estate of Lauren Beuttel has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

51. As a direct and proximate result of Cumberland's negligence, Jacob Davison suffered fatal injuries and the Defendant is responsible for his death and damages as set forth below:

- a. Cindy Jane Beuttel, the surviving parent of Jacob Davison, deceased, has suffered and will continue to suffer mental and physical anguish, loss of society and companionship, and all other damages and expenses allowed under Tennessee law;
- b. Donald Vernan Davison, the surviving parent of Jacob Davison, deceased, has suffered and will continue to suffer mental and physical anguish, loss of

society and companionship, and all other damages and expenses allowed under Tennessee law; and

- c. The Estate of Jacob Davison has lost prospective net accumulations and has incurred medical and funeral expenses due to the decedent's injury and death.

WHEREFORE, Plaintiffs, JOHNATHAN BEUTTEL and LaDEANA GAMBILL, as the Co-Personal Representative of the Estate of LAUREN A. BEUTTEL, deceased, and CINDY JANE BEUTTEL, as the Personal Representative of the Estate of JACOB D. DAVISON, deceased, for the benefit of the respective survivors and Estates demand judgment for compensatory damages and costs against Defendant CUMBERLAND GUARDRAIL.

Respectfully submitted on June ____, 2017

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COST BOND

I, the undersigned, pursuant to T.C.A. § 20-12-125, acknowledge myself as surety for amounts required by law or included in the Clerk's bill of costs in this cause.

GREG COLEMAN LAW, P.C.

By: _____

Justin G. Day, Esq.