

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MISSOURI HIGHWAYS &
TRANSPORTATION COMMISSION,

Plaintiff,

vs.

Case No.: _____

LINDSAY CORPORATION
Serve: CT Corporation System
5601 South 59th Street,
Suite C
Lincoln, Nebraska 68516

JURY TRIAL DEMANDED

and

LINDSAY TRANSPORTATION
SOLUTIONS, LLC
Serve: CT Corporation System
5601 South 59th Street,
Suite C
Lincoln, Nebraska 68516

and

LINDSAY INTERNATIONAL HOLDINGS
(USA), LLC
Serve: CT Corporation System
5601 South 59th Street,
Suite C
Lincoln, Nebraska 68516

and

LINDSAY SALES HOLDING CO., LLC
Serve: CT Corporation System
5601 South 59th Street,
Suite C
Lincoln, Nebraska 68516

and

SAFE TECHNOLOGIES, INC.
Serve: Harvard Business Services, Inc.
16192 Coastal Highway
Lewes, Delaware 19958

and

BARRIER SYSTEMS, LLC.
Serve: The Corporation Trust Company
Corporation Trust Center 1209 Orange Street,
Wilmington, Delaware 19801

and

LINDSAY IRRIGATION SOLUTIONS,
LLC
Serve: CT Corporation System
5601 South 59th Street,
Suite C
Lincoln, Nebraska 68516

and

VALMONT INDUSTRIES, INC.
Serve: CT Corporation System
120 South Central Avenue
Clayton, MO 63105

and

VALMONT HIGHWAY DISTRIBUTION
LIMITED
Serve: 12 Offenhauser Dr.
East Tamaki, Auckland, New Zealand 2013

Defendants.

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION'S
PETITION FOR DAMAGES**

COMES NOW the Missouri Highways and Transportation Commission, by and through its undersigned counsel, and for its Petition for Damages against Lindsay Corporation; Lindsay Transportation Solutions, LLC; Lindsay International Holdings (USA), LLC; Lindsay Sales

Holding Co., LLC; Safe Technologies, Inc.; Barrier Systems, Inc.; Lindsay Irrigation Solutions, LLC; Valmont Industries, Inc.; and Valmont Highway (collectively “Defendants”), hereby states as follows:

PARTIES

1. The Missouri Highways and Transportation Commission (“MHTC”) is a six-member bipartisan board that governs the Missouri Department of Transportation (“MODOT”). MHTC is authorized to pursue legal relief under Mo. Rev. Stat. § 226.971.

2. MODOT is an agency of the state of Missouri that is responsible for maintaining various public roadways throughout Missouri.

3. Lindsay Corporation (“Lindsay Corp.”) is a corporation that was incorporated under the laws of Delaware with its principal place of business in Omaha, Nebraska. Lindsay Corp. may be served with process through its registered agent, CT Corporation System at 5601 South 59th Street, Suite C, Lincoln, Nebraska 68516.

4. Lindsay Transportation Solutions, LLC (“Lindsay Solutions”), is a limited liability company organized under the laws of California with its principal place of business in Omaha Nebraska. Lindsay Solutions may be served with process through its registered agent, CT Corporation System at 5601 South 59th Street, Suite C, Lincoln, Nebraska 68516.

5. Lindsay International Holdings (USA), LLC (“Lindsay International Holdings”), is a limited liability company organized under the laws of Nebraska with its principal place of business in Omaha Nebraska. Lindsay International Holdings may be served with process through its registered agent, CT Corporation System at 5601 South 59th Street, Suite C, Lincoln, Nebraska 68516.

6. Lindsay Sales Holding Co., LLC (“Lindsay Sales”), is a limited liability company organized under the laws of Nebraska with its principal place of business in Omaha Nebraska. Lindsay Sales may be served with process through its registered agent, CT Corporation System at 5601 South 59th Street, Suite C, Lincoln, Nebraska 68516.

7. Safe Technologies, Inc. (“Safe Technologies”) is a Corporation organized under the laws of Delaware and is a wholly owned subsidiary of Lindsay Solutions. Safe Technologies may be served with process through its registered agent, Harvard Business Services, Inc. at 16192 Coastal Highway, Lewes, Delaware 19958.

8. Barrier Systems, LLC (“Barrier Systems”) is a limited liability company organized under the laws of Delaware and is a wholly owned subsidiary and/or operational unit or division of Lindsay Corp. Barrier Systems may be served at Corporation Trust Center 1209 Orange Sreet, Wilmington, Delaware 19801.

9. Lindsay Irrigation Solutions, LLC (“Lindsay Irrigation”) is a limited liability company organized under the laws of Nebraska with its principal place of business in Omaha Nebraska. Lindsay Irrigation may be served with process through its registered agent, CT Corporation System at 5601 South 59th Street, Lincoln, Nebraska 68516.

10. Upon information and belief, Lindsay Solutions, Lindsay International Holdings, Lindsay Sales, Safe Technologies, Barrier Systems, and Lindsay Irrigation are wholly-owned subsidiary, affiliates, successors of former Lindsay affiliates, operational units, and/or divisions of Lindsay Corp. (collectively “Lindsay Entities”).

11. The Lindsay Entities, develop, manufacture, test, market, promote, advertise, distribute, or sell guardrail end terminal systems throughout the United States, including the state of Missouri.

12. Valmont Industries, Inc. (“Valmont Industries”) is a corporation incorporated under the laws of Delaware with its principal place of business in Omaha, Nebraska. Valmont Industries may be served with process through its registered agent, CT Corporation System at 120 South Central Avenue, Clayton, Missouri 63105.

13. Valmont Highway Distribution Limited (“Valmont Highway”) is a foreign for-profit corporation organized and existing under the law of New Zealand, and is a wholly-owned subsidiary and/or operational unit or division of Valmont Industries, with its principal place of business in East Tamaki, Auckland, New Zealand. Valmont Highway Distribution Limited may be served at 12 Offenhauser Dr., East Tamaki, Auckland, New Zealand 2013.

14. Valmont Industries and Valmont Highway (collectively “Valmont Entities”) develop, manufacture, test, market, promote, advertise, distribute, or sell guardrail end terminal systems throughout the United States, including the state of Missouri.

JURISDICTION AND VENUE

15. This Court has personal jurisdiction over the Defendants in this matter pursuant to § 506.500. R.S.Mo. in that Defendants have transacted business within the state, have entered into contracts with Missouri entities or Missouri citizens, and have committed tortious actions within the State of Missouri.

16. This Court has subject matter jurisdiction over each of MHTC’s claims pursuant to Mo. Const. Art. V § 14.

17. Venue is proper in the Circuit Court of Cole County, pursuant to § 508.010.4, because MHTC was first injured by the Defendants’ conduct in Cole County, Missouri.

FACTS COMMON TO ALL COUNTS

18. Guardrails and guardrail end terminals are separate and distinct devices, which are purchased separately and distinctly from one another.

19. Guardrails are safety barriers which are intended to prevent a motorist from inadvertently leaving a roadway.

20. Guardrail end terminals are separate devices, which are attached to guardrails in order to prevent or reduce the risk of injury or death to vehicle occupants and others in the event that a vehicle collides with the end point of a guardrail.

21. Guardrail end terminals are designed to absorb or re-direct the kinetic energy of an errant vehicle upon impact, while preventing spearing, vaulting, rollovers, and other unintended redirections of an impacting vehicle, thereby improving motorist and passenger safety while simultaneously reducing the risk of serious injury or death to the occupants of an impacting vehicle and other motorists.

22. The X-Lite Guardrail End Terminal Tangent System (“X-Lite System”) is a re-directive, gating end terminal, designed for shielding the ends of guardrail systems. The total X-Lite System consists of a head unit, specifically designed crumple posts, tension rods, a cable assembly, slider assembly, and other standard guardrail components.

23. The X-Lite System was originally designed, developed, manufactured, tested, marketed, sold, and distributed by the Valmont Entities.

24. The Valmont Entities entered into a licensing agreement with the Lindsay Entities relating to the continued development, design, production, sale, and distribution of the X-Lite System.

25. The Lindsay Entities and Valmont Entities are engaged in a joint venture related to the continued design, development production, sale, and distribution of the X-Lite System.

26. On July 18, 2013, the Lindsay Entities requested that the Missouri Department of Transportation (“MODOT”) and MHTC review and approve the X-Lite System for use on Missouri Highways.

27. On August 22, 2013 MODOT approved the X-Lite System for use as a Type A device on Missouri Highways.

28. MODOT based its approval of the X-Lite System upon NCHRP 350, Test Level 3 crash testing performed by the Lindsay Entities and a safety analysis performed by the Federal Highway Administration (“FHWA”).

29. However, the Lindsay Entities did not disclose that they used different variants of the X-Lite system during testing or that it had modified the X-Lite System design throughout the course of its testing.

30. The X-Lite System was added to MODOT’s qualified products list for contractors, subcontractors, and suppliers to use on roadway improvement projects supervised by MODOT and MHTC.

31. Contractors hired by MHTC would then select qualified products from the approved products list in order to complete their respective projects for MHTC/MODOT.

32. The Lindsay Entities marketed and sold the X-Lite System by representing that the X-Lite system was effective for re-directing the kinetic energy of an errant vehicle upon impact, while preventing spearing, vaulting, rollovers, and other unintended redirections of an impacting vehicle, thereby improving motorist and passenger safety while simultaneously reducing the risk of serious injury or death to the occupants of an impacting vehicle and other motorists.

33. X-Lite Systems were first installed on Missouri Highways beginning in June of 2014.

34. Between 2014 and 2016, X-Lite Systems were installed across the Missouri State Highway System by contractors and subcontractors working on MODOT roadway projects.

35. After the X-Lite system was installed throughout the Missouri Highway system, the X-Lite system failed to function correctly and constituted an unreasonably unsafe roadway condition on Missouri highways.

36. Specifically, MHTC first learned that the X-Lite Systems installed throughout Missouri were defective during the course of litigation captioned *Estate of George J. Jansen v. Lindsay Corporation, et al.* (Case No. 17SA-CV000698) (“Jansen Matter”).

37. The Jansen Matter involved a motor vehicle collision with a defective X-Lite System. MHTC incurred damages in the form of incurring attorney’s fees and paying a \$400,000 settlement to resolve the claims against it in the Jansen Matter.

38. The design of the X-Lite System was defective, and ineffective at preventing spearing, vaulting, rollovers, and other unintended redirections of an impacting vehicle.

39. Despite the assurances and documents submitted to the FHWA by the Lindsay Entities, the X-Lite system did not comply with the NCHRP Report 350 guidelines.

40. Following the events which gave rise to the Jansen Matter, the X-Lite System continuously failed to perform as designed, intended, and advertised during other motor vehicle collisions.

41. MHTC continues to incur damages in the form of attorney fees while litigating collateral matters arising out of X-Lite System malfunctions.

42. Malfunctions of the X-Lite system have increased the risk of serious injury or death in motor vehicle accidents. Motorists, passengers, and others have suffered property damage, serious injuries, or death across the country and within the State of Missouri because of the defective X-Lite System.

43. MHTC approved contracts to remove and replace all existing X-Lite System terminals installed across the Missouri State Highway System. A total of 655 X-Lite System installations have been removed and replaced to date.

44. To date, MHTC has removed and replaced approximately 655 X-Lite System installations throughout the Missouri Highway system.

45. MTHC has incurred approximately \$4,776,479.25 in the process of removing and replacing the X-Lite System installations across the Missouri State Highway System.

COUNT I – STRICT LIABILITY – DEFECTIVE DESIGN
(ALL DEFENDANTS)

46. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 45 of its Petition as if fully stated herein.

47. At all relevant times as alleged herein the Defendants or their predecessors collectively designed, marketed, and sold the X-Lite System in the regular course of their business to contractors and subcontractors for use on projects to improve Missouri Roadways.

48. At all relevant times, the X-Lite System was defective and posed an unreasonably dangerous safety hazard to the occupants of vehicles and others traveling on Missouri roadways because:

- a. The Defendants failed to use due care in the design, development, manufacture, assembly, testing, and inspection of the X-Lite System;

b. The Defendants continuously modified the design of the X-Lite system throughout testing of the X-Lite system, which the Defendants used to obtain government approval, without disclosing that various portions of the testing were performed using product variations that would not be sold or used on public roadways;

c. The Defendants failed to disclose known design defects and/or that the X-Lite system would only function as advertised in narrow and specific circumstances;

d. The Defendants failed to comply with the applicable engineering standards and guidelines when they designed, manufactured, and tested the X-Lite System;

e. The Defendants concealed or misrepresented the results of testing done on the X-Lite System which showed that the X-Lite system was defective and unreasonably safe; and

f. The Defendants failed to recall the X-Lite system when it failed to perform as designed and advertised on public roadways, resulting in death or serious injuries to members of the public;

g. Specifically, the X-Lite was defective because its end treatment and supporting posts did not collapse, telescope, or retreat, nor did the bolts and attachments give way and direct the attached guardrails away from the impacting vehicle and roadway as designed and marketed, but instead allowed the attached guardrails to violently penetrate the front end of impacting vehicles

h. The defective X-Lite System did not function as advertised, intended, or designed, because it failed to prevent the end of guardrails from violently penetrating through vehicles which caused death or serious injury to the occupants of the impacting vehicle.

49. MHTC, MODOT, and their affiliate contractors and subcontractors used the X-Lite System in a reasonably anticipatable manner and in accord with its advertised purpose.

50. As a direct and proximate result of the unreasonably safe condition created by the use of the X-Lite System on Missouri Roadways, motorists and their passengers have been seriously harmed or killed in motor vehicle accidents that should not have resulted in fatalities or critical injuries.

51. As a direct and proximate result of the unreasonably safe condition created by the use of the X-Lite System, property, including the roadways and guardrails of the State of Missouri, were damaged during motor vehicle accidents.

52. The state of Missouri, MHTC, and MODOT have suffered damages to its roadways and in removing and replacing the dangerous and defective X-Lite System from public roadways.

53. The state of Missouri, MHTC, and MODOT have suffered damages litigating collateral matters arising out of motor vehicle accidents involving malfunctioning X-Lite systems.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count I against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

COUNT II – STRICT LIABILITY – FAILURE TO WARN
(ALL DEFENDANTS)

54. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 53 of its Petition as if fully stated herein.

55. At all relevant times as alleged herein, the Defendants designed and sold the X-Lite system in the regular course of their business.

56. At the time that Defendants marketed and sold the X-Lite system to MHTC and MODOT, as well as their contractors or subcontractors, the X-Lite system was in a defective condition and unreasonably dangerous when put to its reasonably anticipated use.

57. Defendants did not give adequate warning of the dangerous and defective conditions of the X-Lite system, but rather falsely stated that the system was effective at deflecting errant vehicles, redirecting kinetic force, and reducing the number and severity of injuries sustained in motor vehicle collisions.

58. The X-Lite system was used by MODOT, MHTC, contractors, and subcontractors, in a reasonably anticipated manner, installing these devices onto guardrail installations across the State of Missouri, unaware of the dangers posed by the defective design.

59. Had MHTC been properly warned and advised of the true operational aspects of the X-Lite system, MHTC would not have approved installation of the X-Lite terminal ends across the State of Missouri due to the increased risk of harm to motorists, passengers, and other occupants of Missouri roadways.

60. As a direct and proximate result of the defective and unreasonably safe condition that existed at the time that the X-Lite system was sold, MHTC has been damaged in that it has been required to remove and replace the X-Lite systems from all roadways across the State of Missouri in order to protect motorists and passengers thereby incurring costs to remove these unreasonably dangerous devices.

61. As a direct and proximate result of the defective and unreasonably dangerous condition as existed when the X-Lite system was sold, the X-Lite system has damaged other

property, including without limitation the roadways and guardrails of the State of Missouri, and posed a substantial risk to the general public.

62. As a direct and proximate result of the defective and unreasonably dangerous condition created by the X-Lite system, MHTC has suffered damages litigating collateral matters which arise out of motor vehicle accidents involving malfunctioning X-Lite systems.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count II against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

COUNT III – NEGLIGENCE
(ALL DEFENDANTS)

63. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 62 of its Petition as if fully stated herein.

64. At all relevant times as alleged herein, the Defendants designed and sold the X-Lite system in the regular course of their business.

65. At the time that Defendants collectively marketed and sold the X-Lite system to MHTC and its affiliated contractors and subcontractors, the X-Lite system contained a defective, and unreasonably dangerous condition.

66. The Defendants knew, or through the exercise of ordinary care should have known, that the design of the X-Lite system was defective and unreasonably dangerous when put to its reasonably anticipated use.

67. The Defendants had a duty to safely design a product which functioned as advertised and which would enhance the safety of motorists and their passengers rather than imperil them.

68. The Defendants had a duty to warn MHTC, MODOT, contractors, subcontractors, and the general public that the X-Lite system was defective, unreasonably safe, did not function as advertised, and increased the risk of property damage, bodily harm, and death to those involved in motor vehicle accidents.

69. The Defendants failed to safely design the X-Lite System in a manner which would allow it to function as advertised and serve as a roadway safety device which would prevent bodily harm or death to motorists and their passengers.

70. The Defendants failed to warn MHTC, MODOT, their contractors, or their subcontractors, of the aforementioned defects to the X-Lite system, or alert and/or warn MHTC, MODOT, contractors, subcontractors, or the public of the danger posed by these defects in their design.

71. MHTC, MODOT, and their affiliated contractors/subcontractors used the X-Lite system in a reasonably anticipated manner by installing these devices onto guardrail installations across the State of Missouri.

72. Had MHTC or MODOT been properly warned and advised of the true operational aspects of the X-Lite system, it would not have been installed across the State of Missouri due to the increased risk of harm to motorists, passengers, and other occupants of Missouri roadways.

73. As a direct and proximate result of the defective and unreasonably safe condition that existed at the time that the X-Lite system was sold to MHTC and its affiliated contractors and subcontractors, MHTC has been damaged in that it has been required to remove and replace the

X-Lite system devices from all roadways across the State of Missouri in order to protect Missouri motorists, thereby incurring equipment and labor costs to remove these unreasonably dangerous devices.

74. As a direct and proximate result of the defective and unreasonably dangerous condition as existed when the X-Lite system was sold, the X-Lite system has damaged other property, including without limitation the roadways and guardrails of the State of Missouri, and posed a substantial risk to the general public.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count III against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

COUNT IV – BREACH OF EXPRESS WARRANTIES
(ALL DEFENDANTS)

75. MHTC hereby incorporates by reference the allegations contained in Paragraphs 1 through 74 as if fully stated herein.

76. The Lindsay Entities expressly warranted that the X-Lite System functioned in a manner which prevented guardrail terminals from penetrating vehicles.

77. The Lindsay Entities expressly warranted that the X-Lite System would be free from defects in material or workmanship and that they would replace, free of cost, any product or component part that contained a defect.

78. The Lindsay Entities expressly warranted that the X-Lite System passed the necessary product testing to be placed on MHTC/MODOT's Qualified Product List for use by their affiliated contractors and subcontractors on roadway improvement projects.

79. The aforementioned warranties by the Lindsay Entities became part of the bargain between the Lindsay Entities, MHTC, MODOT, and their affiliated contractors/subcontractors.

80. MHTC relied upon the express warranties made by the Lindsay Entities when it placed the X-Lite System on their Qualified Project List and/or purchased X-Lite Systems for roadway improvement projects.

81. The Valmont Entities are liable for the express warranties made by the Lindsay Entities because the Valmont Entities are engaged in a joint enterprise with the Lindsay Entities relating to the design, manufacture, and sale of the X-Lite System.

82. Alternatively, MHTC and/or MODOT was a third-party beneficiary of agreements between the Lindsay Entities and contractors/subcontractors who purchased the X-Lite System for use on Missouri roadway improvement projects.

83. The X-Lite systems sold to, and ultimately installed by, MHTC, MODOT, or their affiliated contractors/subcontractors did not comply with the promises, affirmations, or express warranties made by the Lindsay Entities.

84. MHTC was damaged due to the failure of the X-Lite system to conform with the express warranties made by the Lindsay Entities in that MHTC has incurred significant expense in order to remove and replace the X-Lite system across the Missouri's State Highway System.

85. As a direct and proximate result of the Defendants' breached warranties, MHTC has incurred approximately \$4,776,479.25 in damages to date removing X-Lite System

installations across the State of Missouri. MHTC has also suffered other damages making repairs to its roadways.

86. As a direct and proximate result of the Defendants' breached warranties, MHTC has suffered damages litigating collateral matters which arise out of motor vehicle accidents involving malfunctioning X-Lite systems.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count IV against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

COUNT V – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(ALL DEFENDANTS)

87. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 86 of its Petition as if fully stated herein.

88. The Defendants designed, manufactured, and sold the X-Lite system to MHTC, MODOT, or their affiliated contractors/subcontractors for use on the Missouri State Highway System.

89. R.S.Mo. § 400.2-314 creates an implied warranty that goods are fit for the ordinary purposes for which the goods are used.

90. Guardrail end terminals like the X-Lite System are ordinarily used and designed for the purpose of being attached to guardrails in order to prevent or reduce the risk of injury or death to vehicle occupants and others in the event that a vehicle collides with the end point of a guardrail.

91. Guardrail end terminals like the X-Lite system are ordinarily used to absorb or re-direct the kinetic energy of an errant vehicle upon impact, while preventing spearing, vaulting, rollovers, and other unintended redirections of an impacting vehicle, thereby improving motorist and passenger safety while simultaneously reducing the risk of serious injury or death to the occupants of an impacting vehicle and other motorists.

92. The X-Lite System, manufactured and sold by the Defendants was not fit for the ordinary purpose for which such goods are used, specifically:

a. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors did not improve the safety of Missouri motorists or passengers;

b. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors did not reduce the kinetic energy of impacting errant vehicles as marketed, sold, and intended;

c. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors increased, rather than decreased, the severity of collisions with guardrails across the State of Missouri; and

d. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors increased, rather than decreased, the chance of property damage, personal injury, and death to impacting motorists and passengers.

93. As a direct and proximate result of the Defendants' breached warranties, MHTC has incurred damages removing and replacing the defective X-Lite system from Missouri roadways. MHTC has also suffered damages making other repairs to its roadways.

94. As a direct and proximate result of the Defendants' breached warranties, MHTC has suffered damages litigating collateral matters which arise out of motor vehicle accidents involving malfunctioning X-Lite systems.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count V against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

**COUNT VI – BREACH OF IMPLIED WARRANTY
OF FITNESS FOR A PARTICULAR PURPOSE
(ALL DEFENDANTS)**

95. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 94 of its Petition as if fully stated herein.

96. R.S.Mo. § 400.2-315 creates an implied warranty in any sale of goods that a good will be fit for a particular purpose when the seller knows that the buyer is relying on the seller's skill or judgment in selecting a particular good for a particular purpose.

97. MHTC and MODOT relied on the Defendants skill and judgment when they approved the X-Lite System for use on Missouri Roadways and placed the X-Lite system on their Qualified Product List.

98. The Defendants knew that MHTC and MODOT had certain standards which qualified products for use on Missouri roadways including the standards tested through NCHRP 350 crash testing.

99. The Defendants warranted that the X-Lite system was fit for the particular purpose of absorbing or re-directing the kinetic energy of an errant vehicle upon impact, while preventing spearing, vaulting, rollovers, and other unintended redirections of an impacting vehicle, thereby improving motorist and passenger safety while simultaneously reducing the risk of serious injury or death to the occupants of an impacting vehicle and other motorists.

100. Alternatively, MHTC and MODOT were third party beneficiaries of the contracts in which Defendants sold X-Lite systems to MHTC/MODOT's affiliated contractors/subcontractors for use on Missouri roadway improvement projects.

101. The X-Lite System, manufactured and sold by the Defendants was not fit for the particular purpose it was purchased, specifically:

a. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors did not improve the safety of Missouri motorists or passengers;

b. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors did not reduce the kinetic energy of impacting errant vehicles as marketed, sold, and intended;

c. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors increased, rather than decreased, the severity of collisions with guardrails across the State of Missouri; and

d. The X-Lite system sold to MHTC, MODOT, or their affiliated contractors/subcontractors increased, rather than decreased, the chance of property damage, personal injury, and death to impacting motorists and passengers.

102. As a direct and proximate result of the Defendants' breached warranties, MHTC has incurred damages removing and replacing the defective X-Lite system from Missouri roadways. MHTC has also suffered damages making other repairs to its roadways.

103. As a direct and proximate result of the Defendants' breached warranties, MHTC has suffered damages litigating collateral matters which arise out of motor vehicle accidents involving malfunctioning X-Lite systems.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count VI against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

COUNT VII – FRAUD
(ALL DEFENDANTS)

104. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 103 of its Petition as if fully stated herein.

105. The Defendants represented to MHTC and/or MODOT that the X-Lite Systems sold for use on Missouri roadways were consistent with the same variants of the X-Lite system which satisfied NCHRP 350 crash testing and the Federal Highway Administration's safety standards.

106. The NCHRP 350 crash testing was conducted, at least in part, by Safe Technologies, which at all relevant times was a fully owned subsidiary of Lindsay Corp.

107. Safe Technologies had a conflict of interest in testing the X-Lite System and issuing its findings regarding the X-Lite System's compliance with the NCHRP 350 standards.

108. The Defendants did not disclose that testing of the X-Lite system was performed by an affiliated corporate entity with a conflict of interest.

109. Upon information and belief, the Defendants continuously modified the X-Lite System throughout the course of the applicable NCHRP 350 testing but did not disclose to MHTC or MODOT that the X-Lite System which would ultimately be installed on Missouri Roadways varied in design.

110. The Defendants misrepresented the results of the NCHRP 350 crash testing for the purpose of making prospective purchasers believe that the X-Lite System functioned safely and as designed.

111. The Defendants requested that the X-Lite System be placed on MHTC and MODOT's Qualified Products List using the aforementioned misrepresentations and omissions with the intent that MODOT and/or MHTC would approve the X-Lite System for use on Missouri roadways and that it would thereafter sell X-Lite Systems to MHTC, MODOT, contractors, and subcontractors for use on Missouri roadway improvement projects.

112. Upon information and belief, the Defendants misrepresented information regarding the X-Lite system for the purpose of increasing their sales and generating revenue without regard for the safety or wellbeing of the public.

113. In reliance on the Defendants misrepresentations, MHTC and MODOT place the X-Lite System on their Qualified Product List which resulted in the X-Lite System being used on a number of roadway improvement projects throughout Missouri.

114. At all relevant times, the Defendants knew that the X-Lite System would not function as they warranted, advertised, or represented.

115. But for Defendants' misrepresentations, the X-Lite System would never have been approved for use on Missouri Roadways.

116. MHTC suffered damages as a result of the Defendants' misrepresentations by replacing the X-Lite Systems which have been installed on Missouri roadways to remedy the unreasonably dangerous condition created by the defective X-Lite Systems.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count VII against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

COUNT VIII – PUBLIC NUISANCE
(ALL DEFENDANTS)

117. MHTC hereby incorporates by reference its allegations contained in Paragraphs 1 through 116 of its Petition as if fully stated herein.

118. The X-Lite System was dangerous and defectively designed because it failed to prevent guardrails from violently penetrating impacting vehicles causing serious bodily harm to motorists and their passengers.

119. The installation of X-Lite Systems across Missouri roadways constituted an interference with the rights of the public at large to freely and safely use the Missouri roadways.

120. The presence of the X-Lite System on Missouri roadways constituted a hazard to motorists and passengers who were travelling upon Missouri Roadways.

121. The X-Lite System's presence on Missouri roadways constituted a public nuisance because of the unreasonably safe condition it created on Missouri Roadways and the increased risk that motorists and passengers would suffer severe injuries or death in motor vehicle accidents.

122. Consistent with their lawful purpose, MHTC and MODOT abated the public nuisance caused by the defective X-Lite System by replacing the X-Lite Systems that had been installed on public roadways.

123. As a direct and proximate cause of the public nuisance created by the X-Lite System, MHTC suffered damages in the form of property damage, litigation costs, and remediation costs.

WHEREFORE, for the reasons stated herein, MHTC prays for judgement in its favor for Count VII against the Defendants, for compensatory damages in excess of \$5,176,479.25 together with all pre and post judgment interest at the maximum rate allowed by law, along with its costs incurred, including its reasonable attorneys' fees, reasonable attorney's fees incurred in collateral actions brought by third-parties, punitive damages, and any additional relief that this Court deems just and proper under the circumstances.

BATY OTTO CORONADO PC

/s/ Theresa A. Otto

Theresa A. Otto MBN 43453

Patrick M. Hunt MBN 63898

Evan M. Schodowski MBN 70796

4600 Madison Avenue, Suite 210

Kansas City, MO 64112

Telephone: (816) 531-7200

Facsimile: (816) 531-7201

totto@batyotto.com

phunt@batyotto.com

eschodowski@batyotto.com

ATTORNEYS FOR PLAINTIFF