

IN THE CIRCUIT COURT OF PUTNAM COUNTY  
AT COOKEVILLE, TENNESSEE

JOYCE MOYER and ROBERT MOYER,

Plaintiffs,

vs.

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

Defendants.

2018 JAN 31 AM 11:31

PUTNAM CO. CIRCUIT COURT  
COOKEVILLE, TN

Docket No: 2018-CV-013

Jury Trial Requested

FILED  
2018 JAN 31 AM 11:33  
PUTNAM CO. CIRCUIT COURT  
COOKEVILLE, TN

COMPLAINT

Plaintiffs, JOYCE MOYER and ROBERT MOYER, now appear, by and through counsel, in this case, which arises out of the injuries suffered by JOYCE MOYER in a traffic collision on June 30, 2017, in Putnam County, Tennessee, on account of the wrongful and negligent conduct by and/or attributable to the Defendants herein; for causes of action against these Defendants, Plaintiffs state the following contentions:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JOYCE MOYER is a citizen and resident of Clarksville, Montgomery County, Tennessee, residing at 231 Timber St. Drive, Apt. 1, Clarksville, Tennessee 37043.
2. Plaintiff, ROBERT MOYER is a citizen and resident of Clarksville, Montgomery County, Tennessee, residing at 231 Timber St. Drive, Apt. 1, Clarksville, Tennessee 37043.

3. At all relevant times herein, JOYCE MOYER and ROBERT MOYER, were husband and wife.

4. 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 2222 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).

5. Lindsay Corp 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 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.

6. 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).

7. 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.

8. 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' 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).

9. 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.

10. 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).

11. 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.

12. 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.

13. 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 Airs 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 with in 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).

14. 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.

15. 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).

16. 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.

17. 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 with in 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)

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

19. LINDSAY CORPORATION; LINDSAY TRANSPORTATION SOLUTIONS SALES & SERVICE, LLC; BARRIER SYSTEMS VALMONT INDUSTRIES, INC.;

VALMONT HIGHWAY; and ARMORFLEX INTERNATIONAL LIMITED are referred to as collectively “Lindsay” or “Lindsay Defendants.”

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

### **ALLEGATIONS COMMON TO ALL COUNTS**

21. On or about June 30, 2017, on Interstate 40 at Mile Marker 298.45 in Putnam County, Tennessee, Joyce Moyer was the seat-belted driver of a 2008 Jeep Liberty, Vehicle Identification Number (“VIN”) 1J8GP28K98W200503, Tennessee License Number Y3956W.

22. At that time and place, the 2008 Jeep was traveling eastbound on I-40, within the speed limit, when it left the roadway off the right shoulder and immediately thereafter, the Jeep collided with the X-LITE guardrail end terminal (“Subject Guardrail”) that bordered I-40.

23. 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 Jeep, it was not able to maintain its integrity and stop the W-beams, thus allowing the W-beams to pierce through the Jeep’s exterior and frame, and enter its driver’s side occupant compartment and puncture all the way through into the rear passenger area.

24. During the collision, the W-beams penetrated the occupant compartment of the vehicle where Joyce Moyer was sitting, and violently struck her, causing her to suffer immediate, horrible, and agonizing pain, severe damage to her body, internal bleeding, hemorrhaging, multiple fractures, and partial amputation of her left leg.



25. 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**

26. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 25 as if fully set forth herein.

27. 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 Plaintiff Joyce Moyer to unnecessary and unreasonable risks.

28. 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.

29. As a direct, proximate, and foreseeable result of the Lindsay Defendants negligence, Joyce Moyer suffered permanent, catastrophic bodily injuries, including amputation, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, the expense of hospitalization, medical and nursing care and treatment,

loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, if any. The losses are either permanent or continuing and Plaintiff Joyce Moyer will suffer the losses in the future.

WHEREFORE, Plaintiff, JOYCE MOYER, demands a jury of twelve to try the issues set forth herein and further requests that this Court allow a fair and reasonable judgment not to exceed the amount of Twenty Million Dollars (\$20,000,000.00), exclusive of any claim for punitive damages, for compensatory damages and costs against the Defendants.

### **COUNT II- STRICT LIABILITY AGAINST THE LINDSAY DEFENDANTS**

30. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 25 as if fully set forth herein.

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

32. 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.

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

- 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.

34. 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.

35. 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.

36. As a direct, proximate, and foreseeable result of the Lindsay Defendants negligence, Joyce Moyer suffered permanent, catastrophic bodily injuries, including amputation, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, the expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, if any. The losses are either permanent or continuing and Plaintiff Joyce Moyer will suffer the losses in the future.

WHEREFORE, Plaintiff, JOYCE MOYER, demands a jury of twelve to try the issues set forth herein and further requests that this Court allow a fair and reasonable judgment not to

exceed the amount of Twenty Million Dollars (\$20,000,000.00), exclusive of any claim for punitive damages, for compensatory damages and costs against the Defendants.

### **COUNT III: NEGLIGENCE OF CUMBERLAND**

37. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 25 as if fully set forth herein.

38. 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 Putnam County, Tennessee.

39. 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 JOYCE MOYER from unnecessary and unreasonable risks.

40. 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.

41. 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.

42. Cumberland's acts and/or omissions created an unreasonable risk of injuries to vehicle occupants and the motoring public, including JOYCE MOYER.

43. As a direct, proximate, and foreseeable result of Cumberland's negligence, Joyce Moyer suffered permanent, catastrophic bodily injuries, including amputation, and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, the expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, and aggravation of a previously existing condition, if any. The losses are either permanent or continuing and Plaintiff Joyce Moyer will suffer the losses in the future.

WHEREFORE, Plaintiff, JOYCE MOYER, demands a jury of twelve to try the issues set forth herein and further requests that this Court allow a fair and reasonable judgment not to exceed the amount of Twenty Million Dollars (\$20,000,000.00), exclusive of any claim for punitive damages, for compensatory damages and costs against the Defendant.

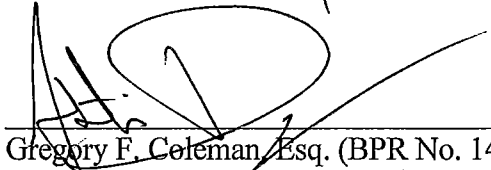
**COUNT V – LOSS OF CONSORTIUM**  
**(ALL DEFENDANTS)**

44. Plaintiffs hereby incorporate by reference previous paragraphs 1 through 25 as if fully set forth herein:

45. As a direct and proximate result of the injuries and losses sustained by Joyce Moyer, her spouse Robert Moyer has suffered and will continue to suffer in the future, loss of love, companionship, affection, society, consortium, comfort, martial relations, services and support that he previously received from his spouse.

WHEREFORE, Plaintiff Robert Moyer demands a jury of twelve to try the issues set forth herein and further requests that this Court allow a fair and reasonable judgment not to exceed the amount of Twenty Million Dollars (\$20,000,000.00), exclusive of any claim for punitive damages, for compensatory damages and costs against these Defendants.

Respectfully Submitted on this 31<sup>st</sup> day of January, 2018.



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*Attorneys for Plaintiffs*



**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.