

CAUSE NO. _____

JAY SCOTT TRAYLOR,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
TRINITY INDUSTRIES, INC, and	§	DALLAS COUNTY, TEXAS
TRINITY HIGHWAY PRODUCTS, LLC.,	§	
	§	
Defendants.	§	
	§	
	§	____ JUDICIAL DISTRICT
	§	

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Jay Scott Traylor (“Traylor”), Plaintiff, by counsel, and files this Original Petition against Trinity Industries, Inc. and Trinity Highway Products, LLC (collectively “Trinity”), and for causes of action would respectfully show as follows:

1.0 Discovery Plan

1.1 Pursuant to TRCP 190.1, Plaintiff respectfully requests that discovery in this case be conducted under Level 3 by further order of this Court, as set forth in TRCP 190.4.

2.0 Parties

2.1 Plaintiff is an individual residing in Alamance County, North Carolina.

2.2 Defendant Trinity Industries, Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business in Dallas, Texas. Trinity Industries, Inc. may be served with process by serving its registered agent for service of process: CT Corp System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201 – 4234.

2.3 Defendant Trinity Highway Products, LLC, is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Dallas, Texas. Trinity Highway Products, LLC may be served with process by serving its registered agent for service of process: CT Corp System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201 – 4234.

3.0 Jurisdiction and Venue

3.1 This Court has jurisdiction over this matter for the reason that the amount in controversy exceeds the jurisdictional minimum of this court, exclusive of costs and interest, and for the reason that one or more Defendants are residents of the State of Texas, maintain their principal place of business in Texas and/or are doing business in the State of Texas.

3.2 Venue is proper in Dallas county under Texas Civil Practice and Remedies Code §15.002(a)(2) because at least one Defendant is a resident of Dallas County. Venue is proper to all other Defendants is proper under Texas Civil Practice and Remedies Code §15.005.

4.0 The Occurrence

4.1 This case arises out of an accident that occurred on or about September 27, 2014 on westbound I-40 near the junction with I-85 in Orange County, North Carolina.

4.2 At the time of the accident, Plaintiff was driving a 1999 Isuzu [VIN: JACDJ58X2X793144] with North Carolina license plate PPA6024 on westbound I-40.

4.3 While driving Plaintiff's vehicle veered off the right hand side of the roadway and into a guardrail end terminal.

4.4 At the time of the accident, the guardrail and end terminal in question was defective and unreasonably dangerous. As a result of this condition, instead of performing as

intended, the guardrail penetrated through the driver's side floorboard area. This penetration continued into the passenger compartment and impaled Plaintiff, causing massive injuries.

4.5 As a result of this incident, Plaintiff is now a double amputee. He has sustained serious and permanently disabling injuries that will impact him for the rest of his life.

4.6 The end terminal system struck by Traylor was designed, manufactured and marketed by Defendant Trinity. As intended, the end terminal is designed to extrude the guardrail through the head so the guardrail flattens out into a ribbon, which allows the energy from the impact to be absorbed and prevent the guardrail from penetrating the vehicle upon impact.

5.0 Conditions Precedent

5.1 All conditions precedent have been performed or have occurred. TEX. R. CIV. P. 54.

6.0 Factual Background

6.1 Trinity Industries, Inc. is the parent corporation of Trinity Highway Products, LLC and as such controls Trinity Highway Products, LLC (collectively "Trinity").

6.2 Trinity is in the business of manufacturing and selling various highway safety and construction products for use across the United States and specifically in and more specifically manufactures and sells the ET-Plus guardrail end terminal ("ET-Plus") under an exclusive licensing agreement from Texas A & M University.

6.3 The ET-Plus unit is commonly referred to as a "head" or "end terminal" and when used in conjunction with the standard "W-beam" style guardrail see throughout the roads and highways of America is designed to safely absorb and dissipate the energy of a vehicular impact.

6.4 Upon impact, the guardrail is designed to be extruded through the head and flattened out into a ribbon, thus absorbing the majority of the collision energy.

6.5 The original production of the ET-Plus, built to approved specifications, was overall very successful and not only did it work for an initial impact, it continued, in minimally the majority of instances, to work even when struck again in a separate incident and before maintenance crews were able to repair it.

6.6 The ET-Plus, along with each and every other product used on the National Highway System throughout the United States must undergo testing to determine and validate crashworthiness before the product may be placed on the National Highway System or on the roads of the State of North Carolina.

6.7 The Federal Highway Administration, a division of the United States Government under the U.S. Department of Transportation, along with other state and federal organizations are charged with establishing the crashworthiness criteria for products such as the ET-Plus.

6.8 North Carolina, like other states, requires that its Department of Transportation (“NCDOT”) approve any product installed on its roadways. Each highway project in North Carolina is governed by contract documents issued by NCDOT. These documents require that any products installed on North Carolina’s highways be both previously approved by the NCDOT and compliant with National Cooperative Highway Research Program Report 350 (“NCHRP 350”), if tested prior to January 1, 2011, or tested using the Manual for Assessing Safety Hardware (“MASH”), if presented for testing after that date. Products previously accepted under NCHRP 350 do not need to be retested unless, of course, the product is changed.

6.9 NCHRP 350, Recommended Procedures for the Safety Performance Evaluation of Highway Features, establishes a performance range on several criteria that guardrail terminals

must satisfy through as many as seven different tests to be deemed safe and reliable for installation. The prime contractor who submits a winning bid on a project must sign contract documents agreeing with the NCDOT to install only state-approved, NCHRP 350 or MASH-compliant products.

6.10 North Carolina has an Approved Products List for the product at issue. Trinity manufactures and sells guardrail end terminals under the names ET-2000 Plus, ET-Plus and ET-31, among others. The ET-Plus, also known as ET-2000 Plus, was approved by NCDOT and placed on NCDOT's Approved List for End Terminal. The version of the ET-Plus approved by NCDOT remains on NCDOT's current Approved Product List. NCDOT has not approved any other version of the ET-Plus.

6.11 Once a product is approved for use along the National Highway System or the roadways of North Carolina, its design specifications cannot be altered; or if altered, the product must undergo additional testing and approval prior to its placement on the roadways of North Carolina or the National Highway System.

6.12 Beginning sometime between 2000 and 2005, a different or altered ET-Plus started appearing along the National Highway System and on the roads in North Carolina, in particular, a revised or altered "head" was manufactured with an exit gap of approximately 1.0 inches rather than approximately 1.5 inches as originally tested, approved, and manufactured.

6.13 Beginning in early 2005, yet another different or altered ET-Plus started appearing along the National Highway System and on the roads in North Carolina; in particular, a revised or altered 'head' was manufactured with a 4" feeder chute (as opposed to the prior approved 5" feeder chute) and a shorter overall height.

6.14 In addition to the above, due to the shortened height, the feeder rails are actually inserted into the head .75" rather than being welded flush to it as originally designed and approved, thus drastically reducing the overall space of the feeder chute.

6.15 Trinity twice petitioned the Federal Highway Administration ("FHWA") for modifications to other components of the overall ET-Plus system; once in September of 2005 and then again in August of 2007.

6.16 The above-described requests (September 2005 and August 2007) dealt with components sold with the ET-Plus and their configuration, and nowhere in these design changes does Trinity mention the reduced feeder chute size or any other changes to the ET-Plus head.

6.17 Based upon information and belief, Trinity never officially notified or petitioned the Federal Highway Administration, the North Carolina Department of Transportation or any branch or unit of any federal or state government for approval or consideration of the feeder chute changes as described above.

6.18 The ET-Plus, as modified in 2005 and at issue in this case, does not allow the guardrail to feed properly through the chute due to the reduced internal area of the head itself causing the guardrail to "throat lock" in the head during impact.

6.19 Once "throat lock" occurs, as is the case in this action, the ET-Plus system violently stops or redirects the vehicle in a manner causing serious injury or death – often by impalement.

6.20 Based on information and belief, Trinity, at all times relevant hereto, knew of the dangerous conditions created by its unapproved, modified ET-Plus system, as literally hundreds of thousands of these unapproved, secretly modified, inherently dangerous ET-Plus systems have been in use across the country for several years preceding the incident at issue in this lawsuit.

7.0 Cause of Action – Defendant Trinity

7.1 Defendant Trinity has a duty to exercise ordinary care in the design, testing, marketing and distribution of the impact head system to ensure that it was not unreasonably dangerous for its intended and foreseeable use on the highways of the State of North Carolina. Defendant Trinity knew, or in the exercise of ordinary care should have known, that the impact head as re-designed in approximately 2005 was defective and unreasonably dangerous to members of the driving public, including Plaintiff. Defendant Trinity breached its duty of ordinary care by placing the end terminal into the stream of commerce in a defective and unreasonably dangerous condition and by certifying it as NCHRP 350 compliant. This negligence on the part of Defendant Trinity was a proximate cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the end terminal on or about January 27, 2014.

7.2 Defendant Trinity is the manufacturer of the guardrail and impact head system installed by a contractor at the location in question and in place at the time of the accident. It was foreseeable to Defendant Trinity that accidents would occur involving impact between vehicles and guardrails placed along the highways of the State of Texas. Defendant Trinity defectively designed, manufactured, assembled, marketed and/or distributed the end terminal system when it modified the product in approximately 2005 in a manner that prevents the impact head system from operating as intended. As such, Defendant Trinity is liable under the doctrine of strict product liability. To the extent necessary, Plaintiff invokes the doctrine of strict product liability as set forth in the Restatement (Second) of Torts §402A and Restatement (Third) of Torts; Product Liability §1-§2. The defective nature of the end terminal system was a producing

cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the guardrail on or about January 27, 2014.

7.3 The Texas Uniform Commercial Code provides for an implied warranty of merchantability on products sold in Texas. As such, there was an implied warranty that the end terminal system was merchantable. Defendant Trinity breached this implied warranty because the end terminal system was of such condition to render it unfit for the ordinary purpose for which it was to be used. This breach of the implied warranty of merchantability by Defendant Trinity was a producing cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the end terminal system on or about January 27, 2014.

7.4 The Texas Uniform Commercial Code provides for an implied warranty of fitness for a particular purpose on products sold in Texas. As such, there was an implied warranty that the guardrail and impact head system was fit for the particular purpose of use on roadways such as I-40. Defendant Trinity has reason to know the particular purpose for which the end terminal system was intended, and that users like Plaintiff would rely on the skill and judgment of Defendant Trinity to select or furnish a suitable end terminal system. Defendant Trinity breached this implied warranty because the end terminal system was not suitable for use on I-40. This breach of the implied warranty of fitness for a particular purpose by Defendant Trinity was a producing cause and cause-in-fact of the injuries sustained by Plaintiff when her car impacted the guardrail on or about January 14, 2014.

8.0 Damages

8.1 As a result of the occurrence in question, Plaintiff sustained severe, permanent, and disabling injuries.

8.2 As a result of these injuries, Plaintiff is entitled to recover compensatory damages in an amount that exceeds the jurisdictional minimum of this court for each of the following elements:

8.2.1 The cost of reasonable and necessary medical care sustained in the past and that in reasonable probability will be sustained in the future;

8.2.2 The lost earnings and loss of earning capacity sustained in the past; and loss of earning capacity that, in reasonable probability, will be sustained in the future;

8.2.3 Physical impairment sustained in the past; and physical impairment that, in reasonable probability, will be sustained in the future;

8.2.4 Disfigurement sustained in the past; and disfigurement that, in reasonable probability, will be sustained in the future;

8.2.5 Physical pain sustained in the past and physical pain that, in reasonable probability, will be sustained in the future;

8.2.6 Mental anguish sustained in the past; and mental anguish that, in reasonable probability, will be sustained in the future.

8.3 Plaintiff is also entitled to pre-judgment and post-judgment interest at the highest rates allowed by law.

9.0 Demand for Jury

9.1 Plaintiff hereby makes demand for his right to a trial by jury afforded by the Texas Constitution and the United States Constitution and tenders the requisite fee to the district clerk concurrent with the filing of this Original Petition.

10.0 Request for Disclosure

10.1 Pursuant to Texas Rule of Civil Procedure 194, Defendant Trinity Industries, Inc. is requested to disclose all information as provided by Rule 194.2 within fifty (50) days of being served with a copy of this request and this Original Petition.

10.2 Pursuant to Texas Rule of Civil Procedure 194, Defendant Trinity Highway Products, LLC, is requested to disclose all information as provided by Rule 194.2 within fifty (50) days of being served with a copy of this request and this Original Petition.

Prayer

WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer and that on final trial Plaintiff have and recover:

- a. Judgment against Defendants, jointly and severally, for compensatory and punitive damages in an amount that exceeds the minimum jurisdictional limits of the Court more fully set forth above;
- b. Prejudgment and post-judgment interest as provided by law;
- c. Costs of suit; and
- d. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

By: 

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