

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

LINDA SUE YOUNG, as Administrator of the Estate)
of OMAR OTIS ARTIS, deceased; ROSZALIYN C.)
DRAKE; and COURTNEY D. DRAKE,)

Plaintiffs,)

vs.)

TRINITY INDUSTRIES, INC., ENERGY)
ABSORPTION SYSTEMS, INC., and TRINITY)
HIGHWAY PRODUCTS, LLC,)

Defendants.)

Case No.:

COMPLAINT AT LAW

NOW COMES the Plaintiffs, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased; ROSZALIYN C. DRAKE; and COURTNEY D. DRAKE; complaining of the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, states as follows:

PARTIES

1. Plaintiff, LINDA SUE YOUNG, is an individual residing in Peoria, Peoria County, State of Illinois and was appointed Administrator of the Estate of OMAR OTIS ARTIS, deceased, on November 8, 2016.

2. Plaintiff, ROSZALIYN C. DRAKE, is an individual residing in Pekin, Tazewell County, State of Illinois.

3. Plaintiff, COURTNEY D. DRAKE, is an individual residing in Pekin, Tazewell County, State of Illinois.

4. Defendant, TRINITY INDUSTRIES, INC., partakes in the decision making for and control of the designs, manufacture, and sale of transportation, construction, and industrial products, including, but not limited to, guardrail end treatments.

5. Defendant, TRINITY INDUSTRIES, INC., has a principal place of business located in the State of Texas.

6. Defendant, TRINITY INDUSTRIES, INC., is a corporation organized under the laws of the State of Texas.

7. Defendant, TRINITY INDUSTRIES, INC., is authorized to do business in the State of Illinois and has a registered agent for service C T Corporation System, 208 S. LaSalle St., Ste. 814, Chicago, IL, 60604.

8. Defendant, ENERGY ABSORPTION SYSTEMS, INC., partakes in the decision making for and control of the designs, manufacture, and sale of transportation, construction, and industrial products, including, but not limited to, guardrail end treatments.

9. Defendant, ENERGY ABSORPTION SYSTEMS, INC., has the assumed names of Trinity Highway Products, Energy Absorption systems, Trinity Highway, and Trinity Highway International.

10. Defendant, ENERGY ABSORPTION SYSTEMS, INC., has a principal place of business located in the State of Texas.

11. Defendant, ENERGY ABSORPTION SYSTEMS, INC., is a corporation organized under the laws of the State of Delaware.

12. Defendant, ENERGY ABSORPTION SYSTEMS, INC., is authorized to do business in the State of Illinois and has a registered agent for service: C T Corporation System, 208 S. LaSalle St., Ste. 814, Chicago, IL, 60604.

13. Defendant, TRINITY HIGHWAY PRODUCTS, LLC, partakes in the decision making for and control of the designs, manufacture, and sale of transportation, construction, and industrial products, including, but not limited to, guardrail end treatments.

14. Defendant, TRINITY HIGHWAY PRODUCTS, LLC, has a principal place of business located in the State of Texas.

15. Defendant, TRINITY HIGHWAY PRODUCTS, LLC, is a limited liability company organized under the laws of the State of Delaware.

16. Defendant, TRINITY HIGHWAY PRODUCTS, LLC, has a registered agent for service: C T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

17. Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC (hereinafter referred to as “TRINITY”), may be properly served in this action by delivering an original summons and complaint to their registered agents for service.

STATEMENT OF JURISDICTION AND VENUE

18. Jurisdiction and venue are proper in this Court.

19. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332 on the basis of complete diversity of the parties. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

20. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(2). The incident complained of occurred on Thursday, April 9, 2015, in Lincoln, Logan County, Illinois.

FACTS COMMON TO ALL ACTIONS

21. At all times pertinent, Defendants TRINITY design, market, manufacture, and sell various highway safety and construction products for use across the United States.

22. At all times pertinent, the defendants design, market, manufacture, and sell the ET-Plus guardrail end terminal (“ET-Plus”) under an exclusive licensing agreement from Texas A&M University.

23. At all times pertinent, the purpose of ET-Plus end terminal is to absorb energy in the event a motor vehicle collides with or impacts the end terminal of a guardrail and to thereafter bring the motor vehicle to a safe stop.

24. At all times pertinent, The Federal Highway Administration (hereinafter the “FHWA”), 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.

25. At all times pertinent, the original production of the ET-Plus underwent test protocols to obtain FHWA approval in order to sell the ET-Plus.

26. At all times pertinent, the original ET-Plus as tested by Defendants TRINITY and approved by the FHWA, upon information and belief, functioned successfully. This approval was based in part on the design specifications that were submitted to the FHWA by TRINITY and/or its predecessor and/or an entity related to TRINITY.

27. Beginning sometime between 2000 and 2005, a modified version of the ET-Plus started appearing along the National Highway System and on the roads in the State of Illinois.

28. At all times pertinent, the modified ET-Plus system does not absorb energy to slow a motor vehicle to a stop.

29. At all times pertinent, the modified ET-Plus system was not tested and approved by the FHWA.

30. At all times pertinent, the modified ET-Plus System was defective and unreasonably dangerous.

31. At all times pertinent, the defendants knew of the dangerous conditions created by its unapproved, modified ET-Plus system.

32. On or about the morning of April 9, 2015, Plaintiff OMAR OTIS ARTIS, deceased, (“OMAR”), was operating his motor vehicle south on Interstate I-155.

33. On or about the morning of April 9, 2015, Plaintiff ROZSALIYN DRAKE (“ROZALIYN”) and Plaintiff COURTNEY DRAKE (“COURTNEY”) were passengers in the motor vehicle operated by Plaintiff OMAR.

34. On or about the morning of April 9, 2015, at or about mile marker 7, the motor vehicle collided with a modified ET-Plus guardrail (“the Guardrail”).

35. At all times pertinent, the Guardrail was designed, marketed, manufactured, and sold by Defendants TRINITY.

36. At all times pertinent, the Guardrail did not perform as intended and instead penetrated the vehicle through the center grill of the motor vehicle operated by Plaintiff OMAR.

37. At all times pertinent, the Guardrail continued to penetrate the motor vehicle and entered the passenger compartment.

COUNT 1 – STRICT PRODUCT LIABILITY
PLAINTIFF ROZSALIYN C. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. At all times pertinent, the defendants designed, marketed, manufactured, and sold the Guardrail to the State of Illinois.

39. At all times pertinent, the Guardrail was the modified version of the ET-Plus.

40. At all times pertinent, the modified version of the ET-Plus was defective in design and/or defective in manufacture.

41. At all times pertinent, the defective design and/or manufacture was unreasonably dangerous.

42. At all times pertinent, the defendants had sole control of the manufacture and design of the modified version of the ET-Plus.

43. At all times pertinent, the defendants had sole control of the manufacture and design of the Guardrail.

44. On and prior to April 9, 2015, the defective condition existed at the time the product left TRINITY'S control.

45. On and prior to April 9, 2015, there was no abnormal use of the Guardrail.

46. On and prior to April 9, 2015, the Guardrail failed to perform in the manner reasonably to be expected in light of its nature and function.

47. At all pertinent times, Plaintiff was intending to use the Guardrail for its reasonably foreseeable purpose.

48. At all pertinent times, there was no other reasonable cause of the product's failure to perform.

49. As a direct and proximate cause of the unreasonably dangerous condition, the Guardrail pierced the motor vehicle and injured Plaintiff ROZSALIYN.

50. As a result of the foregoing, Plaintiff ROZSALIYN C. DRAKE, suffered severe and permanent injuries and damage, including but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains

she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, ROZSALIYN C. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 2 – NEGLIGENCE
PLAINTIFF ROZSALIYN C. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 50. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty of Count One as if specifically plead herein.

51. At all times pertinent, the defendants were subject to the duty imposed on them by the FHWA.

52. At all times pertinent, the defendants had a duty to run their business according to proper standards, laws, and regulations and in accordance with industry standards.

53. At all times pertinent, the defendants owed duties to possess and apply the knowledge, and use the skill and care ordinarily used by careful professionals in their respective fields.

54. At all times pertinent, the defendants owed a duty to the Plaintiff to exercise reasonable care.

55. Notwithstanding their duty, the defendants committed one or more of the following negligent, and/or fraudulent, and/or willful and wanton, and/or conscious disregard for personal safety, acts or omissions:

- a. failed to design an ET-Plus system that met industry standards and/or those set by FHWA,
- b. failed to safely design an ET-Plus system;
- c. failed to manufacture an ET-Plus system that met industry standards and/or those set by FHWA,
- d. failed to safely manufacture an ET-Plus system,
- e. failed to notify the FHWA of the modification to the accepted ET-Plus design and manufacture,
- f. failed to notify consumers of the modification to the ET-Plus design,
- g. failed to properly test the modified ET-Plus design, and
- h. failed to design, manufacture, sell, or to otherwise provide a safe ET-Plus system to protect intended and foreseeable users from being injured as a result of the system not operating as intended.

56. As a direct and proximate cause of the aforementioned acts on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff ROZSALIYN.

57. As a result of the foregoing negligence, Plaintiff ROZSALIYN C. DRAKE, suffered severe and permanent injuries and damage, including but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, ROZSALIYN C. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and

TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 3 – WILLFUL AND WANTON
PLAINTIFF ROZSALIYN C. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 56. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty-six of Count One and Two as if specifically plead herein.

57. At all times pertinent, it was the duty of the defendant to refrain from willful and wanton conduct which would endanger the safety of Plaintiff ROZSALIYN.

58. As a direct and proximate cause of the willful and wanton conduct on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff ROZSALIYN.

59. As a result of the defendant's willful and wanton conduct, Plaintiff ROZSALIYN C. DRAKE, suffered severe and permanent injuries and damage, including but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, ROZSALIYN C. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, for compensatory and punitive damages in excess of \$75,000, plus fees and costs of this action.

COUNT 4 – BREACH OF WARRANTY
PLAINTIFF ROZSALIYN C. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 59. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through sixty of Counts One through Three as if specifically plead herein.

59. On and prior to April 9, 2015, the Defective condition of the modified ET-Plus System existed at the time the Guardrail left Defendant TRINITY’S control.

60. At all times pertinent the defective condition of the modified ET-Plus system made the Guardrail unfit for ordinary purpose such that the Guardrail is used.

61. On and prior to April 9, 2015, the defendant’s warranted that the Guardrail was fit for its ordinary purpose or in the alternative met industry standards.

62. As a proximate cause of the Guardrail being unfit for the ordinary purpose for which it is intended to be used, the plaintiff was injured.

63. As a result of the defendant’s breaches of warranty, Plaintiff ROZSALIYN C. DRAKE, suffered severe and permanent injuries and damage, including but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, ROZSALIYN C. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 5 – NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
PLAINTIFF ROZSALIYN C. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 64. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through sixty-five of Counts One through Four as if specifically plead herein.

65. Plaintiff was a direct victim, meaning someone who is directly involved in the incident caused by a defendant's negligence.

66. As a direct victim, Plaintiff may recover damages for negligent infliction of emotional distress.

67. As stated previously herein, at all times pertinent, the defendants owed a duty to the Plaintiff to exercise reasonable care.

68. As stated previously herein, at all times pertinent, the defendants disregarded and breached said duty.

69. As a direct and proximate cause of the aforementioned acts on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff ROZSALIYN.

70. As a result of the negligence, Plaintiff, ROZSALIYN C. DRAKE, suffered severe emotional pain and suffering, diminished enjoyment of life, severe emotional distress, and inability to live a normal life.

WHEREFORE, the Plaintiff, ROZSALIYN C. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 6 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
PLAINTIFF ROZSALIYN C. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 70. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through seventy-four of Counts One through Five as if specifically plead herein.

71. At all times pertinent, the defendants conduct constitutes extreme and outrageous conduct.

72. At all times pertinent, the defendants intended to inflict severe emotional distress upon Plaintiffs, or knew that there was a high probability that its conduct would cause them to suffer severe emotional distress.

73. As a direct and proximate cause of the aforementioned acts on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff ROZSALIYN.

74. As a result of the defendant's extreme and outrageous conduct, Plaintiff, ROZSALIYN C. DRAKE, suffered severe emotional pain and suffering, diminished enjoyment of life, severe emotional distress, and inability to live a normal life.

WHEREFORE, the Plaintiff, ROZSALIYN C. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 7 – STRICT PRODUCT LIABILITY
PLAINTIFF COURTNEY D. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 48. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through forty-eight of Count 1 of the Complaint as if specifically plead herein.

49. As a direct and proximate cause of the unreasonably dangerous condition, the Guardrail pierced the motor vehicle and injured Plaintiff COURTNEY.

50. As a result of the foregoing, Plaintiff COURTNEY D. DRAKE, suffered severe and permanent injuries and damage including, but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, COURTNEY D. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 8 – NEGLIGENCE
PLAINTIFF COURTNEY D. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 50. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty of Count Seven as if specifically plead herein.

51. At all times pertinent, the defendants were subject to the duty imposed on them by the FHWA.

52. At all times pertinent, the defendants had a duty to run their business according to proper standards, laws, and regulations and in accordance with industry standards.

53. At all times pertinent, the defendants owed duties to possess and apply the knowledge, and use the skill and care ordinarily used by careful professionals in their respective fields.

54. At all times pertinent, the defendants owed a duty to the plaintiff to exercise reasonable care.

55. Notwithstanding their duty, the defendants committed one or more of the following negligent, and/or fraudulent, and/or willful and wanton, and/or conscious disregard for personal safety, acts or omissions:

- a. failed to design an ET-Plus system that met industry standards and/or those set by FHWA,
- b. failed to safely design an ET-Plus system;
- c. failed to manufacture an ET-Plus system that met industry standards and/or those set by FHWA,
- d. failed to safely manufacture an ET-Plus system,
- e. failed to notify the FHWA of the modification to the accepted ET-Plus design and manufacture,
- f. failed to notify consumers of the modification to the ET-Plus design,
- g. failed to properly test the modified ET-Plus design, and
- h. failed to design, manufacture, sell, or to otherwise provide a safe ET-Plus system to protect intended and foreseeable users from being injured as a result of the system not operating as intended.

56. As a direct and proximate cause of the aforementioned acts on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff COURTNEY.

57. As a result of the negligence, Plaintiff COURTNEY D. DRAKE, suffered severe and permanent injuries and damage including, but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, COURTNEY D. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 9 – WILLFUL AND WANTON
PLAINTIFF COURTNEY D. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. - 56. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty-six of Counts Seven and Eight as if specifically plead herein.

57. At all times pertinent, it was the duty of the defendant to refrain from willful and wanton conduct which would endanger the safety of Plaintiff COURTNEY.

58. As a direct and proximate cause of the willful and wanton conduct on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff COURTNEY.

59. As a direct and proximate result of the defendant's willful and wanton conduct, Plaintiff COURTNEY suffered severe and permanent injuries and damage including, but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains she otherwise would have obtained, was diminished

in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, COURTNEY D. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, for compensatory and punitive damages in excess of \$75,000, plus fees and costs of this action.

COUNT 10 – BREACH OF WARRANTY
PLAINTIFF COURTNEY D. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. - 58. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty-eight of Counts Seven and Eight as if specifically plead herein.

59. On and prior to April 9, 2015, the Defective condition of the modified ET-Plus System existed at the time the Guardrail left Defendant TRINITY’S control.

60. At all times pertinent the defective condition of the modified ET-Plus system made the Guardrail unfit for ordinary purpose such that the Guardrail is used.

61. On and prior to April 9, 2015, the defendant’s warranted that the Guardrail met standards set by FHWA.

62. As a proximate cause of the Guardrail being unfit for the ordinary purpose for which it is intended to be used, the plaintiff was injured.

63. As a result of the breaches, Plaintiff COURTNEY D. DRAKE, suffered severe and permanent injuries and damage including, but not limited to disability, disfigurement, loss of a normal life, pain and suffering, interfered with her employment, caused her to lose financial gains

she otherwise would have obtained, was diminished in her earning capacity, and caused her to incur medical expenses, each of which will continue in the future, all to her damage.

WHEREFORE, the Plaintiff, COURTNEY D. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 11 – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
PLAINTIFF COURTNEY D. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 63. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through sixty-three of Counts Seven through Ten as if specifically plead herein.

64. Plaintiff was a direct victim, meaning someone who is directly involved in the incident caused by a defendant's negligence.

65. As a direct victim, Plaintiff may recover damages for negligent infliction of emotional distress if he or she can prove that the defendant was negligent.

66. As stated previously herein, at all times pertinent, the defendants owed a duty to the Plaintiff to exercise reasonable care.

67. As stated previously herein, at all times pertinent, the defendants disregarded said duty.

68. As a direct and proximate cause of the aforementioned acts on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff COURTNEY.

69. As a result of the negligence, Plaintiff COURTNEY D. DRAKE, suffered severe emotional pain and suffering, diminished enjoyment of life, severe emotional distress, and inability to live a normal life.

WHEREFORE, the Plaintiff, COURTNEY D. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 12 – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
PLAINTIFF COURTNEY D. DRAKE v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 69. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through sixty-nine of Counts Seven through Ten as if specifically plead herein.

70. At all times pertinent, the defendants conduct constitutes extreme and outrageous conduct.

71. At all times pertinent, the defendants intended to inflict severe emotional distress upon Plaintiffs, or knew that there was a high probability that its conduct would cause them to suffer severe emotional distress.

72. As a direct and proximate cause of the aforementioned acts on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff COURTNEY.

73. As a result of the defendant's extreme and outrageous conduct, Plaintiff COURTNEY D. DRAKE, suffered severe emotional pain and suffering, diminished enjoyment of life, severe emotional distress, and inability to live a normal life.

WHEREFORE, the Plaintiff, COURTNEY D. DRAKE, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, for compensatory and punitive damages in excess of \$75,000, plus fees and costs of this action.

COUNT 13 – STRICT PRODUCTS LIABILITY – SURVIVAL ACTION

PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 48. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through forty-eight of Count 1 of the Complaint as if specifically plead herein.

49. As a direct and proximate cause of the unreasonably dangerous condition, the Guardrail pierced the motor vehicle and injured Plaintiff OMAR.

50. As a result of the foregoing, Plaintiff OMAR suffered severe injuries and damages including, but not limited to, conscious pain and suffering, disability, disfigurement, loss of a normal life, interfered with his employment, caused him to lose financial gains he otherwise would have obtained, was diminished in his earning capacity, and caused him to incur medical expenses, up and until the time of his death.

51. As a result of the foregoing, Plaintiff OMAR died an untimely premature death, which otherwise should not have occurred but for the foregoing acts by defendants.

52. There was in full force and effect at the time of this occurrence a statute commonly known as the Survival Act, 735 ILCS 5/27-6.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY

INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 14 – NEGLIGENCE – SURVIVAL ACTION

PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. - 50. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty-two of Count Thirteen as if specifically plead herein.

51. At all times pertinent, the defendants were subject to the duty imposed on them by the FHWA.

52. At all times pertinent, the defendants had a duty to run their business according to proper standards, laws, and regulations and in accordance with industry standards.

53. At all times pertinent, the defendants owed duties to possess and apply the knowledge, and use the skill and care ordinarily used by careful professionals in their respective fields.

54. At all times pertinent, the defendants owed a duty to the plaintiff to exercise reasonable care.

55. Notwithstanding their duty, the defendants committed one or more of the following negligent, and/or fraudulent, and/or willful and wanton, and/or conscious disregard for personal safety, acts or omissions:

- a. failed to design an ET-Plus system that met industry standards and/or those set by FHWA,
- b. failed to safely design an ET-Plus system;

- c. failed to manufacture an ET-Plus system that met industry standards and/or those set by FHWA,
- d. failed to safely manufacture an ET-Plus system,
- e. failed to notify the FHWA of the modification to the accepted ET-Plus design and manufacture,
- f. failed to notify consumers of the modification to the ET-Plus design,
- g. failed to properly test the modified ET-Plus design, and
- h. failed to design, manufacture, sell, or to otherwise provide a safe ET-Plus system to protect intended and foreseeable users from being injured as a result of the system not operating as intended.

56. As a result of the foregoing, Plaintiff OMAR suffered severe injuries and damages including, but not limited to, conscious pain and suffering, disability, disfigurement, loss of a normal life, interfered with his employment, caused him to lose financial gains he otherwise would have obtained, was diminished in his earning capacity, and caused him to incur medical expenses, up and until the time of his death.

57. As a result of the foregoing, Plaintiff OMAR died an untimely premature death, which otherwise should not have occurred but for the foregoing acts by defendants.

58. There was in full force and effect at the time of this occurrence a statute commonly known as the Survival Act, 735 ILCS 5/27-6.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., and ENERGY ABSORPTION SYSTEMS, INC., and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 15 – WILLFUL AND WANTON – SURVIVAL ACTION

PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. - 55. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty-five of Counts Thirteen and Fourteen as if specifically plead herein.

56. At all times pertinent, it was the duty of the defendant to refrain from willful and wanton conduct which would endanger the safety of Plaintiff OMAR.

57. As a direct and proximate cause of the willful and wanton conduct on the part of defendants, the Guardrail pierced the motor vehicle and injured Plaintiff OMAR.

58. As a result of the foregoing, Plaintiff OMAR suffered severe injuries and damages including, but not limited to, conscious pain and suffering, disability, disfigurement, loss of a normal life, interfered with his employment, caused him to lose financial gains he otherwise would have obtained, was diminished in his earning capacity, and caused him to incur medical expenses, up and until the time of his death.

59. As a result of the foregoing, Plaintiff OMAR died an untimely premature death, which otherwise should not have occurred but for the foregoing acts by defendants.

60. There was in full force and effect at the time of this occurrence a statute commonly known as the Survival Act, 735 ILCS 5/27-6.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY

PRODUCTS, LLC, and each of them, compensatory and punitive damages in excess of \$75,000, plus fees and costs of this action.

COUNT 16 – BREACH OF WARRANTY– SURVIVAL ACTION

PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 37. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through thirty-seven of the Complaint as if specifically plead herein.

38. – 57. Plaintiff re-alleges and incorporates herein the allegations in paragraphs thirty-eight through fifty-seven of Counts Thirteen through Fifteen as if specifically plead herein.

58. On and prior to April 9, 2015, the Defective condition of the modified ET-Plus System existed at the time the Guardrail left Defendant TRINITY’S control.

59. At all times pertinent the defective condition of the modified ET-Plus system made the Guardrail unfit for ordinary purpose such that the Guardrail is used.

60. On and prior to April 9, 2015, the defendant’s warranted that the Guardrail was fit for its ordinary purpose, and met industry standards.

61. As a proximate cause of the Guardrail being unfit for the ordinary purpose for which it is intended to be used, Plaintiff OMAR, was injured.

62. As a result of the defendant’s breaches, Plaintiff OMAR suffered severe injuries and damages including, but not limited to, conscious pain and suffering, disability, disfigurement, loss of a normal life, interfered with his employment, caused him to lose financial gains he otherwise would have obtained, was diminished in his earning capacity, and caused him to incur medical expenses, up and until the time of his death.

63. As a result of the foregoing, Plaintiff OMAR died an untimely premature death, which otherwise should not have occurred but for the foregoing acts by defendants.

64. There was in full force and effect at the time of this occurrence a statute commonly known as the Survival Act, 735 ILCS 5/27-6.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 17 – STRICT PRODUCTS LIABILITY – WRONGFUL DEATH ACTION
PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 51. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through fifty-one Count Thirteen of the Complaint as if specifically plead herein.

52. At the aforementioned time, there was, in full force and effect, the Illinois Wrongful Death Act. 740 ILCS 180/1.

53. That Plaintiff's decedent, left surviving him the following heirs-at-law who have sustained pecuniary injury as a result of the decedent's untimely death, including but not limited to loss of support and society: Linda Sue Young, Mother; Robert Artis, Jr., Father; Precious M. Artis, Sister; Steven E. Miller, Half Brother; Roszaliyn C. Drake, Half Sister; Christopher Artis, Half Brother; and Unknown Others.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 18 – NEGLIGENCE – WRONGFUL DEATH ACTION

PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 57. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through fifty-seven of Count Fourteen of the Complaint as if specifically plead herein.

58. At the aforementioned time, there was, in full force and effect, the Illinois Wrongful Death Act. 740 ILCS 180/1.

59. That Plaintiff's decedent, left surviving him the following heirs-at-law who have sustained pecuniary injury as a result of the decedent's untimely death, including but not limited to loss of support and society: Linda Sue Young, Mother; Robert Artis, Jr., Father; Precious M. Artis, Sister; Steven E. Miller, Half Brother; Roszaliyn C. Drake, Half Sister; Christopher Artis, Half Brother; and Unknown Others.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 19 – WILLFUL AND WANTON – WRONGFUL DEATH ACTION

PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 59. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through fifty-nine of Count 15 as if specifically plead herein.

60. At the aforementioned time, there was, in full force and effect, the Illinois Wrongful Death Act. 740 ILCS 180/1.

61. That Plaintiff's decedent, left surviving him the following heirs-at-law who have sustained pecuniary injury as a result of the decedent's untimely death, including but not limited

to loss of support and society: Linda Sue Young, Mother; Robert Artis, Jr., Father; Precious M. Artis, Sister; Steven E. Miller, Half Brother; Roszaliyn C. Drake, Half Sister; Christopher Artis, Half Brother; and Unknown Others.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, for compensatory and punitive damages in excess of \$75,000, plus fees and costs of this action.

COUNT 20 – BREACH OF WARRANTY – WRONGFUL DEATH ACTION
PLAINTIFF LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS,
deceased v. TRINITY

1. – 63. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through sixty-three of Count 16 as if specifically plead herein.

64. At the aforementioned time, there was, in full force and effect, the Illinois Wrongful Death Act. 740 ILCS 180/1.

65. That Plaintiff's decedent, left surviving him the following heirs-at-law who have sustained pecuniary injury as a result of the decedent's untimely death, including but not limited to loss of support and society: Linda Sue Young, Mother; Robert Artis, Jr., Father; Precious M. Artis, Sister; Steven E. Miller, Half Brother; Roszaliyn C. Drake, Half Sister; Christopher Artis, Half Brother; and Unknown Others.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

COUNT 21 – FAMILY EXPENSE ACT

1. – 63. Plaintiff re-alleges and incorporates herein the allegations in paragraphs one through sixty-three of Counts 13 through 20 as if specifically plead herein.

64. That at the time of this occurrence there was in full force and effect in the State of Illinois a statute commonly referred to as the Family Expense Act, 750 ILCS 65/15.

65. That as a direct and proximate result of the foregoing, thaitniffs incurred medical expenses, funeral expense, and other expenses all to their damage.

WHEREFORE, the Plaintiff, LINDA SUE YOUNG, as Administrator of the Estate of OMAR OTIS ARTIS, deceased, prays for judgment against the Defendants, TRINITY INDUSTRIES, INC., ENERGY ABSORPTION SYSTEMS, INC., and TRINITY HIGHWAY PRODUCTS, LLC, and each of them, in excess of \$75,000, plus fees and costs of this action.

Respectfully Submitted,

/s/ James P. LeFante
Attorney for Plaintiff

AND

/s/ Jill M. Webb
Attorney for Plaintiff

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