

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION FILE NO. 1:15-cv-00517-LCB-LPA

DANIELLE WASHINGTON,)
)
Plaintiff)
)
v.)
)
TRINITY INDUSTRIES, INC., and)
TRINITY HIGHWAY PRODUCTS,)
LLC)
)
Defendants)
)

FIRST AMENDED COMPLAINT

Now comes Plaintiff Danielle Washington ("Ms. Washington"), and, for her First Amended Complaint against Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC, says and avers as follows:

PARTIES

1. Plaintiff is an individual residing in Greensboro, North Carolina.
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.
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.

STATEMENT OF JURISDICTION AND VENUE

4. Jurisdiction and venue are proper in this Court.

5. This court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a) as there is diversity of citizenship among the parties, in that each Defendant is now and was at the time the action was commenced diverse in citizenship from the Plaintiff. Furthermore, the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs.

6. Venue in this Court is proper under 28 U.S.C. §1391(b).

FACTUAL BACKGROUND

7. This case arises out of an accident that occurred in the morning hours of November 29th, 2013 on Interstate 40 West near Exit 212 B. Ms. Washington was driving to work when she fell asleep and collided with an extruder-type guardrail end terminal fitted on the blunt end of a line of guardrail. This component is sometimes referred to as an “impact head” or “end treatment.”

8. At the time of the accident, the guardrail and impact head in question was defective and unreasonably dangerous. As a result of this condition, instead of functioning properly by extruding or "ribboning" the guardrail outward and away from Ms. Washington's vehicle, the guardrail locked up within the impact head and proceeded to penetrate Ms. Washington's vehicle through the center grill area. This penetration pierced the passenger compartment of the vehicle. The following picture is from the actual accident scene:



9. As a result of the incident, Ms. Washington suffered severe damage including, but not limited to, hip socket injuries, a ruptured bladder, and a lower lumbar fracture. The following picture depicts her vehicle after it was towed to a local wrecking yard:



10. The "impact head" system impacted by Ms. Washington's vehicle was designed, manufactured and marketed by Defendant Trinity Industries, Inc. and/or Defendant Trinity Highway Products, LLC (collectively referred to herein as "Defendant Trinity").

11. Defendant Trinity refers to this product as the ET-Plus guardrail end terminal (the "ET Plus").

12. Defendant Trinity is in the business of manufacturing and selling various highway safety and construction products for use across the United States and specifically manufactures and sells the ET-Plus under an exclusive licensing agreement from Texas A & M University.

13. Defendant Trinity knew, foresaw, and intended that its ET-Plus would be struck by vehicles in exactly the manner that Ms. Washington's vehicle struck the "impact head" in this incident.

14. As intended, an "impact head" such as the ET-Plus should extrude the guardrail through the head so that the guardrail flattens out into a "ribbon," which allows the energy from the impact to be absorbed by the guardrail, and prevents the guardrail from penetrating a vehicle upon impact.

15. Due to design changes made by Defendant Trinity in the early 2000's and again in 2005, however, the ET-Plus has on numerous occasions failed to perform as intended. As a result, instead of flattening out into a ribbon upon impact, the ET-Plus locks up, causing the guardrail to act like a spear, penetrating the vehicle upon impact. This creates an unreasonable risk of serious injury to occupants of vehicles that impact the guardrail.

16. The Federal Highway Administration ("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 crashworthiness criteria for products such as the ET-Plus and approving their use on the highway system.

17. Before the ET-Plus could be installed on the National Highway System or the roadways of any State, it was required to be crash-tested in order to determine and validate its crashworthiness.

18. Likewise, before the ET-Plus could be installed on the National Highway System or the roadways of any State, it was required to be approved by the FHWA or other applicable agencies.

19. Any ET-Plus which is installed on any roadway must replicate a crash-

tested and approved version.

20. Once a product is approved for use on the National Highway System or the roadways of any State, its design specifications cannot be altered, or if altered, the altered version must undergo additional testing and approval prior to its placement on any roadway.

21. The FHWA approved a version of the ET-Plus in or around 1999.

22. Any modification or change to the approved version of the ET-Plus must be reviewed and approved by the FHWA or other applicable agencies before being installed on any roadway.

23. The approved version of the ET-Plus was overall very successful and performed as designed and intended.

24. Not only did it work for an initial impact, it continued to work even when struck again in a separate incident and before maintenance crews were able to repair it.

25. Beginning sometime between 2000 and 2005, Defendant Trinity produced an altered version of the ET-Plus, and that altered version of the ET-Plus started appearing along the National Highway System and on the roads in North Carolina.

26. The altered version of the ET-Plus had not been approved by the FHWA or other applicable agencies for use on any roadway.

27. In particular, the revised or altered ET-Plus head was manufactured with

an exit gap of approximately 1.0 inches rather than approximately 1.5 inches as originally tested, approved, and manufactured.

28. Beginning in or around early 2005, Defendant Trinity produced yet another altered version of the ET-Plus, and that altered version of the ET-Plus started appearing along the National Highway System and on the roads in North Carolina.

29. In particular, that revised or altered ET-Plus head was manufactured with a 4" feeder chute (as opposed to the prior approved 5" feeder chute) and a shorter overall height.

30. In addition to the above, due to the shortened height of the revised or altered ET-Plus head, the feeder rails were 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.

31. Upon information and belief, Defendant Trinity made the modifications or alterations to the design characteristics of the approved version of the ET-Plus out of a desire to reduce the cost of producing the ET-Plus.

32. Defendant Trinity twice petitioned the FHWA for modifications to other components of the overall ET-Plus system; once in September of 2005 and then again in August of 2007.

33. The above-described requests for modifications (September 2005 and August 2007) dealt with components sold with the ET-Plus and their configuration, and nowhere in these proposed design changes did Defendant Trinity mention the reduced

feeder chute size or any other changes to the ET-Plus head.

34. Upon information and belief, Defendant Trinity never officially notified or petitioned the FHWA or any branch or unit of any federal or state government for approval or consideration of the altered versions of the ET-Plus.

35. Nonetheless, Defendant Trinity produced, marketed, and sold the altered versions of the ET-Plus "head" for installation on the National Highway System and on the roads in North Carolina.

36. The ET-Plus impacted by Ms. Washington's vehicle was not the approved version of the ET-Plus, but was an altered version of the ET-Plus.

37. The ET-Plus at issue in this case is defective and unreasonable dangerous in that it did not perform safely, did not perform as it was intended or designed, and did 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.

38. 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.

39. On October 20, 2014, in *Joshua Harman, on Behalf of The United States of America v. Trinity Industries, Inc.* ("*Harman*"), which was filed In the United States District Court for the Eastern District of Texas – Marshall Division, a jury found that Defendant Trinity violated the False Claims Act by knowingly making, using, or

causing to be made or used, a false record or statement material to a false or fraudulent claim.

40. During this trial in *Harman*, it was revealed for the first time that Defendant Trinity, in conjunction with Texas A&M University, had conducted five crash tests around 2005 of a flared ET-Plus configuration which is substantially similar to many of the installed configurations on the road today, which all failed.

41. The evidence presented in *Harman* established that Defendant Trinity modified the design characteristics of the approved version of the ET-Plus; that it concealed those modifications from the FHWA; that it made those design modifications in order to reduce the cost of producing the ET-Plus; and that it certified to its customers that the altered ET-Plus was identical to the approved version of the ET-Plus.

42. The defects in the unapproved, modified ET-Plus system, the failure of that product to perform as it was designed and intended, and the conduct of Defendant Trinity in inserting that altered ET-Plus system into the marketplace caused or, in the alternative, significantly enhanced, the serious injuries suffered by Ms. Washington in the incident.

43. As the direct and proximate result of Defendant Trinity's actions and the defective and unreasonably dangerous nature of the ET-Plus, Ms. Washington has sustained severe injuries and damages, including the following.

- a. Past and future medical expenses;
- b. Lost earnings and loss of earning capacity sustained in the past; and

loss of earning capacity that, in reasonable probability, will continue to be sustained in the future;

- c. Past and future pain and suffering;
 - d. Scarring and disfigurement;
 - e. Permanent injury;
 - f. Mental anguish sustained in the past; and mental anguish that, in reasonable probability, will continue to be sustained in the future;
- and
- g. Exemplary damages

FIRST CLAIM FOR RELIEF
(Negligence / Products Liability)

45. Ms. Washington incorporates each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

44. Defendant Trinity owed a duty to exercise ordinary care in the design, testing, marketing and distribution of the ET-Plus system impacted by Ms. Washington's vehicle to ensure that it was not unreasonably dangerous for its intended and foreseeable use on the roadways.

45. Defendant Trinity knew, or in the exercise of ordinary care should have known, that the ET-Plus system re-designed in early 2000 and again in 2005 and which was impacted by Ms. Washington's vehicle was defective and unreasonably dangerous to members of the driving public, including Ms. Washington.

46. Defendant Trinity breached its duty of ordinary care by placing the impact head system into the stream of commerce in a defective and unreasonably dangerous condition.

47. Defendant Trinity's actions and negligence in that regard was a proximate cause and cause-in-fact of the injuries sustained by Plaintiff.

48. In the alternative, Defendant Trinity's actions and negligence in that regard significantly enhanced any injuries which Ms. Washington might have suffered in the incident had the ET-Plus system not been defective and unreasonably dangerous and had the product performed in an appropriate manner.

49. It was foreseeable to Defendant Trinity that accidents would occur involving impact between vehicles and the ET-Plus "heads" placed along the roadways in precisely the same manner in which Ms. Washington's vehicle struck the ET-Plus head in the incident.

50. Defendant Trinity defectively designed, manufactured, assembled, marketed and/or distributed the altered ET-Plus in a manner that prevents the impact head system from operating properly, safely, and as intended.

51. As a result of the foregoing, Ms. Washington is entitled to have and recover damages of Defendant Trinity in excess of Seventy Five Thousand and No/100 Dollars (\$75,000.00).

SECOND CLAIM FOR RELIEF
(Strict Liability / Products Liability)

52. Ms. Washington incorporates each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

53. In the alternative and/or in addition to the First Claim for Relief set forth herein, if this Court determines that Texas substantive law applies to Ms. Washington's claims against Defendant Trinity, then Defendant Trinity is liable to Ms. Washington under the doctrine of strict liability.

54. As a result of the foregoing, Ms. Washington is entitled to have and recover damages of Defendant Trinity in excess of Seventy Five Thousand and No/100 Dollars (\$75,000.00).

THIRD CLAIM FOR RELIEF
(Gross Negligence, Intentional, Willful, Wanton Conduct / Punitive Damages)

55. Ms. Washington incorporates each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

56. Defendant 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.

57. Defendant Trinity, at all times relevant hereto, knew that its altered ET-Plus system was not only unapproved, but also that its design had not passed crashworthiness tests.

58. Despite that knowledge, Defendant Trinity knowingly and intentionally produced, marketed, and sold the altered ET-Plus system and allowed that product to be inserted into the National Highway System and the roadways of North Carolina.

59. Despite that knowledge, Defendant Trinity knowingly and intentionally certified that the altered ET-Plus systems that it sold were approved by the FHWA.

60. Defendant Trinity concealed the existence of the altered ET-Plus from the FHWA and other applicable agencies.

61. In those regards, Defendant Trinity knowingly made, used, or caused to be made or used, false records or statements material to a false or fraudulent claim.

62. The officers, directors, and/or managers of Defendant Trinity participated in or condoned the above-referenced conduct and actions.

63. Defendant Trinity's actions as described herein were grossly negligent, intentional, willful, wanton, were done with a reckless indifference for the safety of passengers like Ms. Washington, and were done with a complete disregard for the safety and performance of their products.

64. The actions of Defendant Trinity as described herein warrant the imposition of punitive damages in an amount in excess of Seventy Five Thousand and No/100 Dollars (\$75,000.00) which this Court deems just and proper.

FOURTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

65. Ms. Washington incorporates each and every allegation contained in the preceding paragraphs of this Complaint as if fully set forth herein.

66. The actions of Defendant Trinity as described herein, constitute unfair or deceptive acts or practices in or affecting commerce.

67. The actions of Defendant Trinity as described herein, and particularly its knowing and intentional sale of unapproved, defective, and unreasonably dangerous ET-Plus systems, knowing that those products would be installed on the roadways and anticipating and foreseeing that those products would be impacted by members of the driving public, like Ms. Washington, constitute unfair and deceptive acts or practices in or affecting commerce.

68. Ms. Washington's injuries are the direct and proximate result of Defendant Trinity's actions as described herein.

69. Ms. Washington is entitled to have and recover damages from Defendant Trinity in an amount in excess of Seventy Five Thousand and No/100 Dollars (\$75,000.00).

70. Ms. Washington is also entitled to recover from Defendant Trinity treble the amount fixed by any verdict, such equitable relief as the Court deems necessary or proper, and reasonable costs and attorneys' fees.

DEMAND FOR JURY

71. Plaintiff hereby makes demand for a trial by jury as to each of her claims against Defendant Trinity.

PRAYER FOR RELIEF

WHEREFORE, Ms. Washington respectfully requests that this Court award her the following relief against Defendant Trinity on the claims set forth herein:

1. Damages in excess of Seventy Five Thousand and No/100 Dollars on account of her:

- a. Past and future medical expenses;
- b. Lost earnings and loss of earning capacity sustained in the past; and loss of earning capacity that, in reasonable probability, will continue to be sustained in the future;
- c. Past and future pain and suffering;
- d. Scarring and disfigurement;
- e. Permanent injury;
- f. Mental anguish sustained in the past; and mental anguish that, in

reasonable probability, will continue to be sustained in the future; and

- g. Exemplary damages
2. Punitive damages in the amount determined to be just and proper;
 3. Treble the amount fixed by any verdict;

4. Her reasonable costs and attorneys' fees to the maximum extent allowable by law;
5. Pre-judgment and post-judgment interest to the maximum extent allowable by law; and
6. Such other and further relief as to this Court may seem just and proper.

This the ____ day of _____, 2016.

/s/ Gary J. Rickner

Gary J. Rickner

N.C. State Bar I.D. No.: 25129

E-mail: gjr@wardandsmith.com

Michael J. Parrish

N.C. State Bar I.D. No.: 38419

E-mail: mjp@wardandsmith.com

Joseph A. Schouten

N.C. State Bar I.D. No.: 39430

E-mail: jas@wardandsmith.com

For the firm of

Ward and Smith, P.A.

Post Office Box 33009

Raleigh, NC 27636-3009

Telephone: (919) 277-9100

Facsimile: (919) 277-9177

Collen Andrew Clark

Texas State Bar No. 04309100

E-mail: cclark@clarklawgroup.com

The Clark Firm

2911 Turtle Creek Blvd., Suite 1400

Dallas, TX 75219

Telephone: 214-780-0500

Facsimile: 214-780-0501

Counsel for Plaintiff