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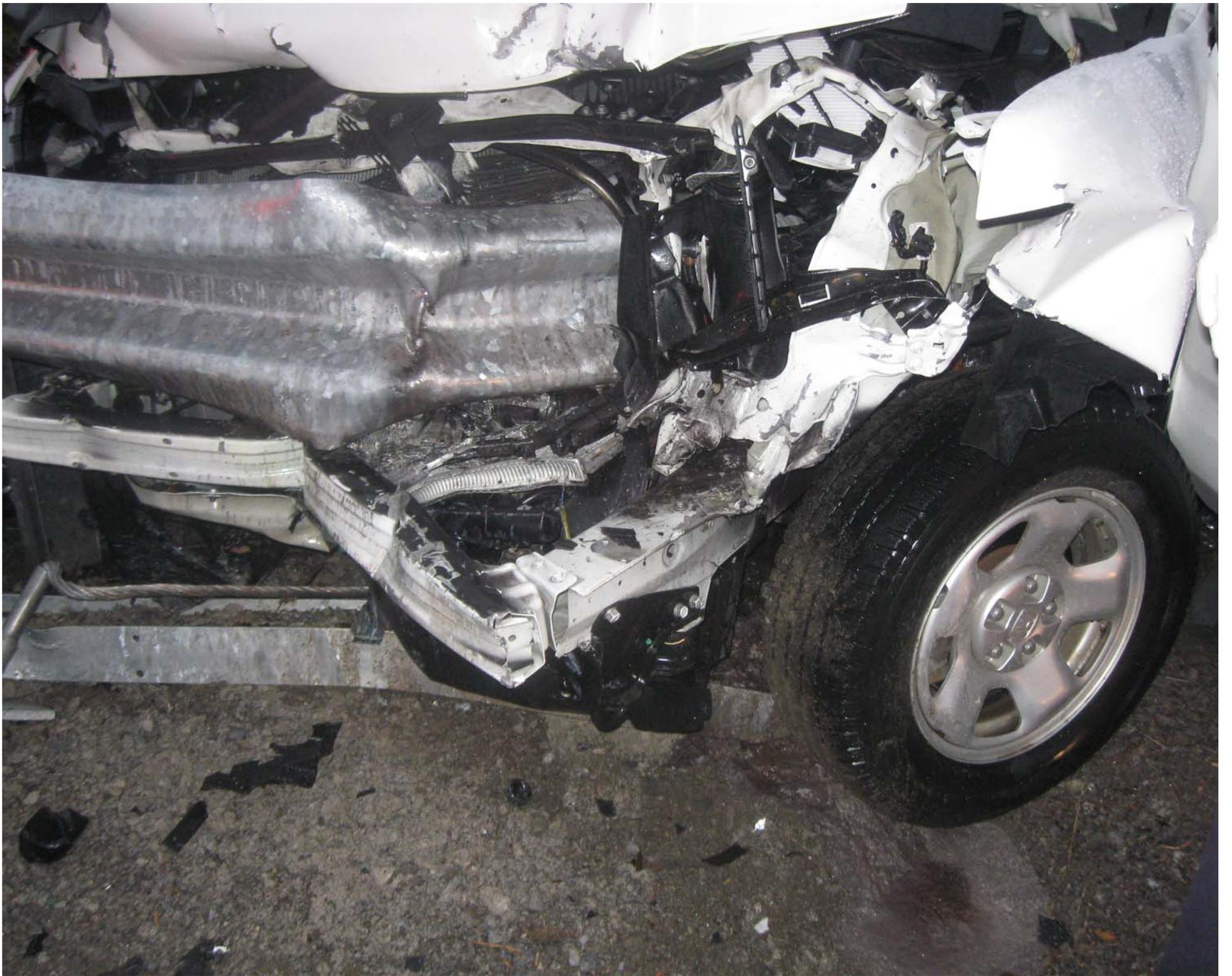




































































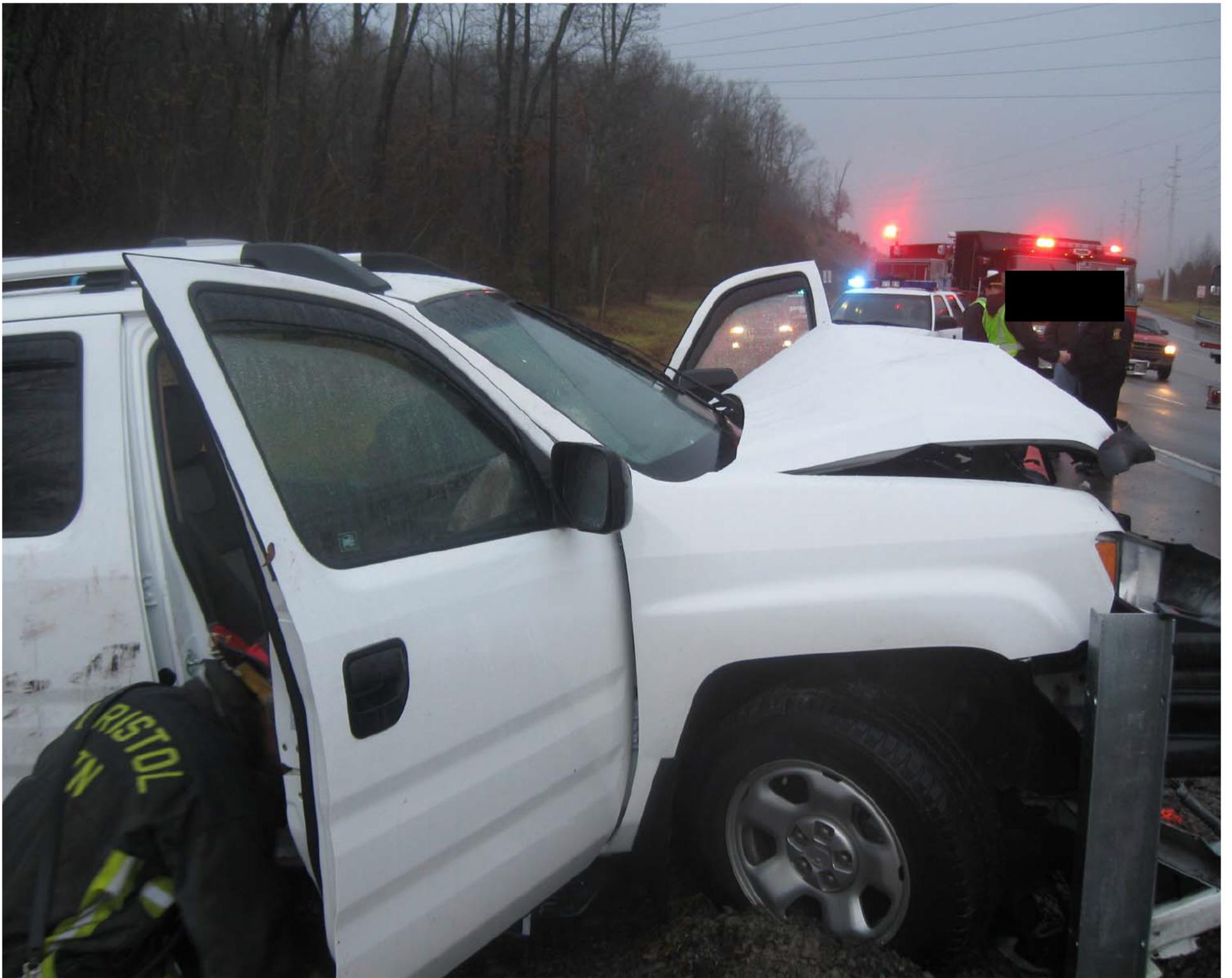








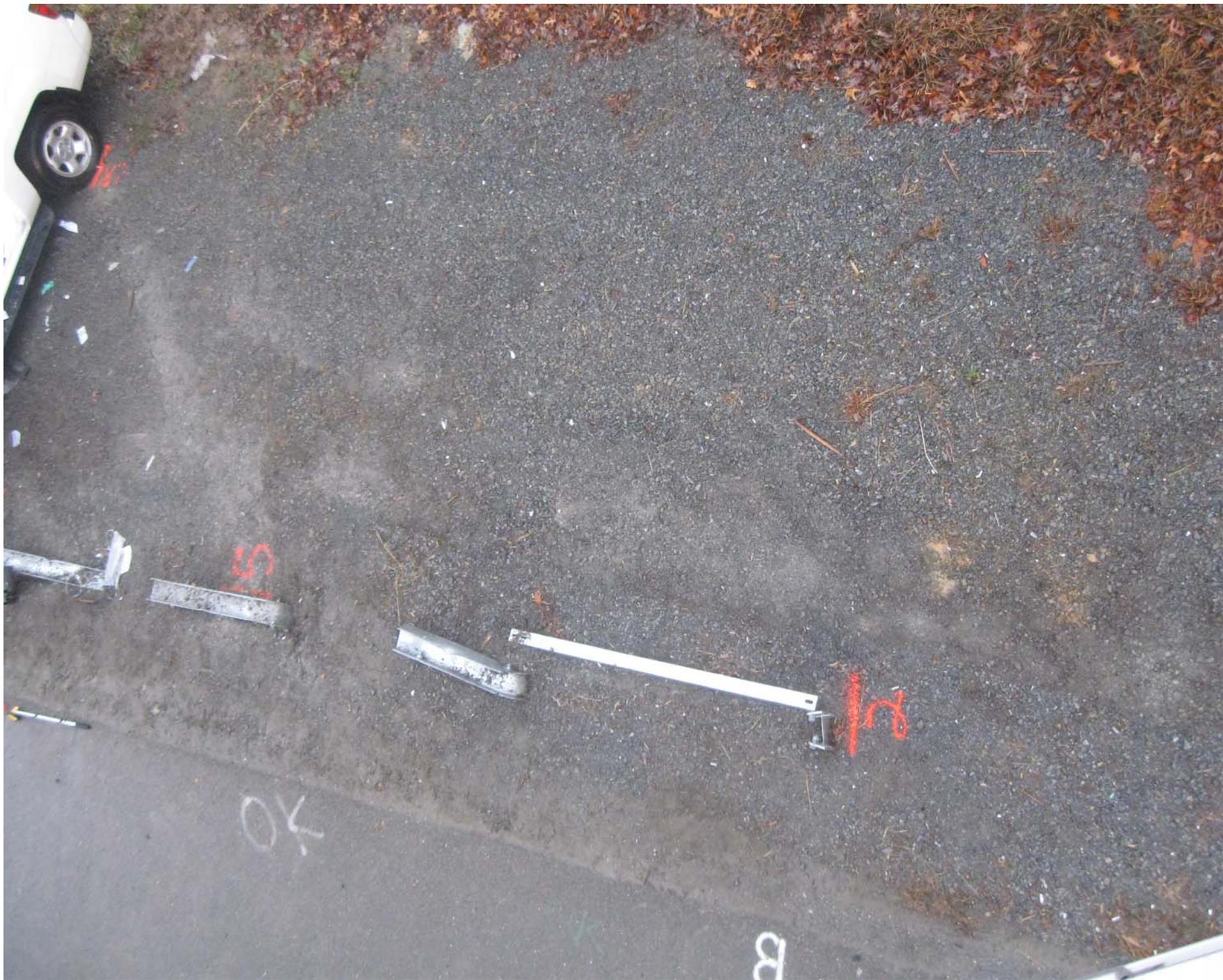






















































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Atlanta, Georgia 31139

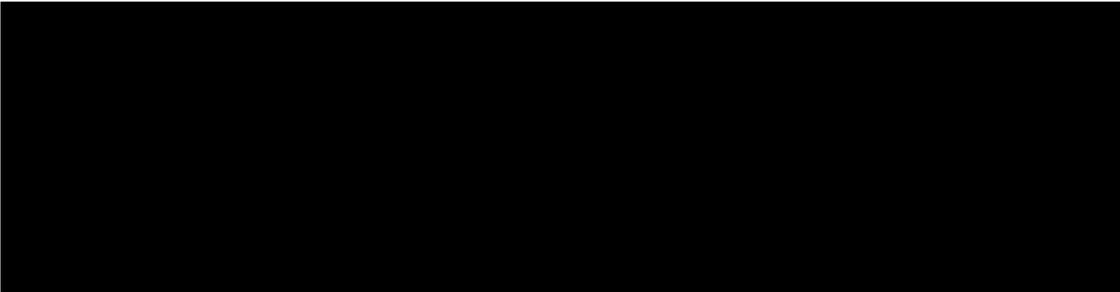
May 2, 2014

George F. Carpinello
Attorney at Law
Boies, Schiller & Flexner LLP
30 South Pearl Street
11th Floor
Albany, NY 12207



Dear Mr. Carpinello:

In regard to your request for a report in this matter, the following is provided.



The impact of the Honda Ridgeline onto the guardrail terminal end was in a classic 'head-on' orientation in which the flat face of the Honda Ridgeline's front end butted against the impact head face of the terminal end with minimal angular offset. This orientation is exactly the type of collision for which the guardrail terminal end is designed to function.



Figure 1: Path of Honda Ridgeline from impact with guardrail terminal end to final rest.

The W-beam guardrails, in general, serve to protect vehicles from roadside obstacles in the event that the vehicle leaves the roadway. However, the treatment of the exposed end of the W-beam guardrail requires special attention, as it is essentially a reinforced blade that can easily penetrate and 'spear' through vehicle bodies and cause serious injury or death to the occupants inside those vehicles. In the subject crash event, the ET-Plus terminal end failed to perform as required and allowed the W-beam guardrail to penetrate the Honda Ridgeline, despite having a near-optimal collision orientation that had good collinearity and minimal offset. This orientation at impact should have resulted in successfully preventing the guardrail from penetrating [REDACTED] Evidence of this orientation is seen in figure 2.



Figure 2: Crush profile, or 'imprint', of guardrail terminal end on the front of the Honda Ridgeline. Note the edges of the imprint from the terminal end impact head face.

This type of guardrail terminal end is designed to move along the guardrail with the front of the vehicle and extrude the W-beam guardrail into a flat ribbon of steel that exits out to the side. In doing so, the forward motion of the vehicle (i.e., the vehicle's kinetic energy) is absorbed and dissipated by bending the W-beam guardrail into a flat ribbon of steel that is directed away from the impacting vehicle. This allows the vehicle to 'ride down' and eventually come to a complete stop in relative safety.

However, in the case of [REDACTED] impact, the terminal end only extruded the W-beam for approximately two feet before the terminal end abruptly ceased riding down the W-beam guardrail.

This condition of the W-beam guardrail arresting the motion of the terminal end is caused by abnormally high extrusion forces inside the terminal end. These abnormally high forces caused buckling of the W-beam guardrail column in the throat of the terminal end that in turn prevented the guardrail from safely extruding as it was designed to do. These abnormally high forces appear to be caused by modifications to the geometry of the terminal end that also reduced cost and weight of the original FHWA-approved ET-Plus terminal end.

In the subject crash of [REDACTED] this redesigned head resulted in locking the terminal end to the W-beam guardrail as the Honda Ridgeline continued traveling forward. The W-beam guardrail, now being prevented from extruding out to the side and away from the vehicle, must now bend back on itself as the vehicle continues forward. Upon cessation of rearward motion, the terminal end bent back on the W-beam approximately 180 degrees, then approximately another 75 degrees, as it was compressed by the front of the Honda.

After the final bend, the W-beam of the guardrail severed and the terminal end was projected approximately 150 feet forward, coming to rest on the right shoulder area approximately 7 feet from the edge of the asphalt. The terminal end still contained the portion of the W-beam that was trapped inside the terminal end and wrapped around the outside of the terminal end prior to separating from the rest of the guardrail. That terminal end is shown in figure 3, figure 4, and figure 5 below.



Figure 3: Terminal end of guardrail that was bent and severed.



Figure 4: Terminal end of guardrail that was bent and severed.



Figure 5: Terminal end of guardrail that was bent and severed.

The remaining W-beam guardrail section then bent back on itself approximately 170 degrees as the vehicle continued forward. The apex of this doubled section then penetrated through the front of the Honda Ridgeline, running alongside the engine, and penetrating the passenger compartment approximately in line with the driver's seat. The pointed apex of the doubled guardrail then impaled [REDACTED] and causing [REDACTED] death. This spearing of the occupant compartment into [REDACTED] seat is shown in figure 6, figure 7, and figure 8 below.



Figure 6: Guardrail penetration into the occupant compartment and driver's seat of the Honda Ridgeline.



Figure 7: Guardrail penetration into the occupant compartment and driver's seat of the Honda Ridgeline.



Figure 8: Guardrail penetration into the occupant compartment and driver's seat of the Honda Ridgeline.

The Honda Ridgeline maintained a heading approximately parallel to the roadway and collinear with the guardrail during the crash sequence. The Honda Ridgeline did not rotate significantly as it impacted the terminal end, nor did it rotate significantly after impacting the terminal end in the distance that the terminal end should have been dissipating and absorbing the majority of the kinetic energy of the forward motion of the vehicle. At the very end of its travel, the vehicle did rotate approximately 95 degrees counter-clockwise and came to rest perpendicular to the shoulder with the front end pointed towards the roadway, but this rotation occurred well after the guardrail terminal end had folded back onto itself and severed, and also after the length of W-beam guardrail had folded back onto itself and penetrated the occupant compartment and driver's seat of the Honda. This is evidenced by the furrows that the rear tires of the Honda created in the gravel immediately prior to coming to rest. These furrows are shown in figure 9.

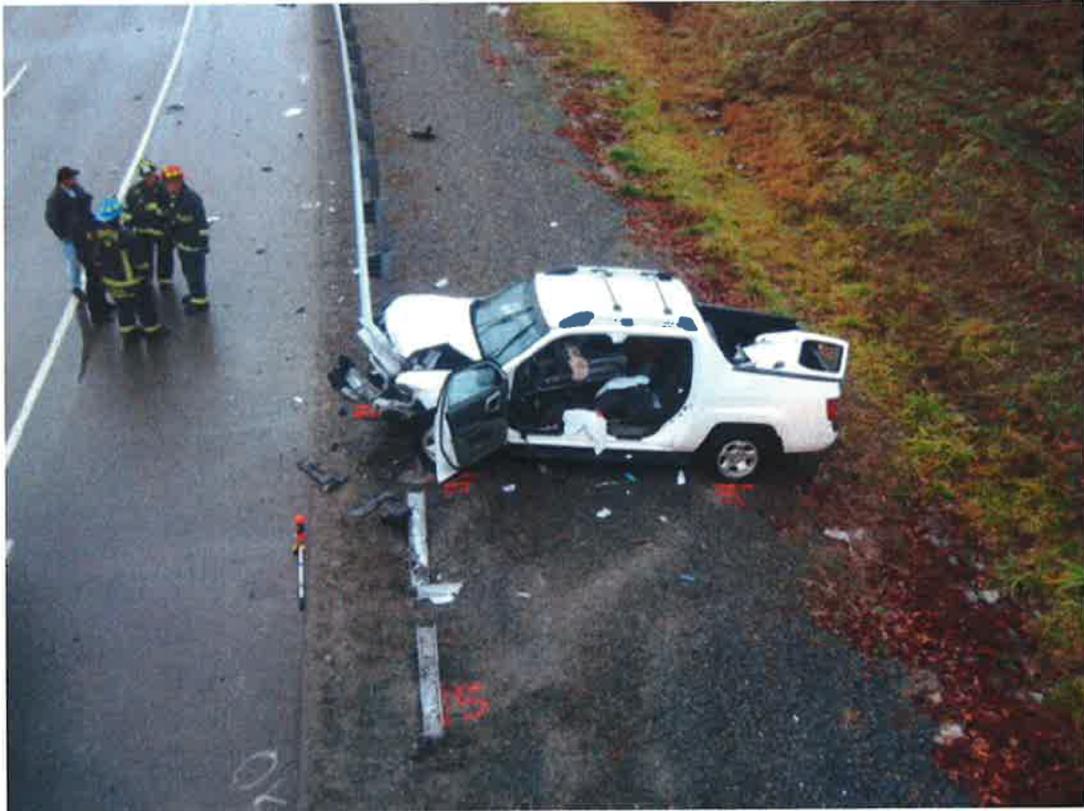
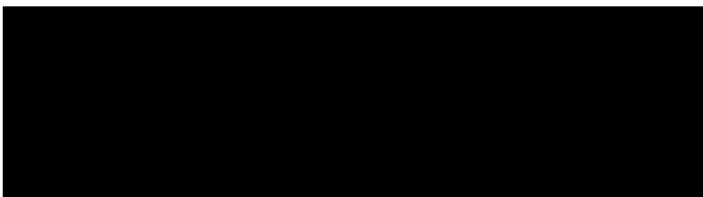


Figure 9: Furrows from the rear wheels and tires of the Honda Ridgeline showing the rotation at the end of its movement.

Preliminary analysis of the speed of the Honda Ridgeline at the initial impact with the terminal end is still ongoing. However, the vehicle came to rest on hard-packed gravel within approximately 28 feet of impacting the guardrail terminal end. This evidence, combined with the fact that the guardrail terminal end failed to extrude the W-beam guardrail during the post-impact translation of the vehicle, indicates that the Honda Ridgeline was traveling slower than the 55 mph posted speed limit. It is expected that an accurate calculation of pre-impact velocity will be achieved as work continues.

Thank you again for the opportunity to assist you with this case. As new information is learned about the subject event, the above analysis is subject to amendment and refinement. I look forward to speaking with you again soon.

Sincerely,



**IN THE CIRCUIT COURT FOR SULLIVAN COUNTY
AT BRISTOL, TENNESSEE**

SANDRA LESTER, as mother and personal)	
Representative/administratrix of the Estate)	
Of Decedent SABRENA CARRIER,)	
Representative and grandmother of A.R.C.,)	
Next of kin, beneficiary and minor son of)	No.: C13737 (M)
SABRENA CARRIER,)	
)	JURY DEMANDED
Plaintiff,)	
)	
v.)	
)	
TENNESSEE GUARDRAIL, INC.,)	(Claims Commission No. 20100759
JAMES H. DREW CORPORATION,)	consolidated with C13737 (M))
TRINITY HIGHWAY PRODUCTS, LLC.,)	
and THE STATE OF TENNESSEE,)	
)	
Defendants.)	

AMENDED COMPLAINT

Plaintiff Sandra Lester, as personal representative / administratrix of the Estate of Decedent Sabrena Carrier, and as representative and grandmother of A.R.C., next of kin, beneficiary and the minor son of Sabrena Carrier, now appears, by and through counsel, in this case, which arises out of the injuries and wrongful death suffered by Sabrena Gayle Carrier ("Ms. Carrier) in a traffic collision on December 17, 2008, in Blountville, Sullivan County, Tennessee, on account of the wrongful and negligent conduct by and/or attributable to the Defendants herein; for cause of action against these Defendants, Plaintiff states the following contentions.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Sandra Lester, as personal representative / administratrix of the Estate of Decedent Sabrena Carrier, and as representative and grandmother of A.R.C., next of kin, beneficiary and the minor son of Sabrena Carrier, is a citizen and resident of Bluff City, Sullivan County, Tennessee, residing at 377 N. Carter Street, Bluff City, Tennessee 37618.

2. Defendant Tennessee Guardrail, Inc. is a domestic corporation doing business in Tennessee and at all times material to this incident was the installer of the guardrail referred to herein.

3. Defendant James H. Drew Corporation, a foreign corporation, organized in the State of Indiana, at all times relevant to this action was doing business in and/or through the jurisdiction of this Honorable Court at the time of the subject incident, and is the parent company for Tennessee Guardrail, Inc.

4. Defendant Trinity Highway Products, LLC (“Trinity”), is a foreign limited liability company, organized in the State of Delaware, which at all relevant times was doing business in the jurisdiction of this Honorable Court. Trinity’s principal place of business is located at 2525 N. Stemmons Freeway, Dallas, Texas, 75207. Trinity was the manufacturer, distributor, marketer, and seller of the guardrail terminal involved in the subject collision.

5. Defendant State of Tennessee is subject to suit in this Honorable Court pursuant to T.C.A. Sections 9-8-301, *et seq.*, and 9-8-401, *et seq.*

6. Jurisdiction and venue are proper in this Honorable Court.

**THE NATURE OF THE PRODUCT DEFECT AND EVENT CAUSING
SABRENA CARRIER'S INJURIES AND DEATH**

7. A guardrail terminal is a safety device designed to absorb energy in the event a motor vehicle collides with or impacts the terminal end of a guardrail. The quality of these safety devices is of grave and serious concern to the federal and state transportation authorities which purchase these devices for installation on roads and highways across the country.

8. Trinity has been (and remains) in the business of manufacturing guardrail systems installed in Tennessee and throughout the United States, including guardrail terminals.

9. At times relevant to this case, Trinity manufactured, distributed, marketed, and sold a guardrail terminal known as the ET-Plus; the "ET-Plus" name is a trademark of Trinity and/or Trinity's agent.

10. Based upon information and belief, through approximately 2004, the ET-Plus was a federally accepted and energy absorbing end terminal. For many years, Trinity (and/or Trinity's predecessor business entity and/or entities related to Trinity) sold the ET-Plus for use at the termination of flexible barriers on the shoulders of roadways and in roadway medians.

11. Trinity has manufactured, distributed, marketed and sold the ET-Plus at all times relevant to this action based on a license it has held, which was assigned to Trinity by a related entity and/or the Texas A&M University System ("Texas A&M"); based upon information and belief, Texas A&M acquired the patent(s) for the ET-Plus from its inventors.

12. At all relevant times, Trinity has manufactured, marketed, distributed and sold the ET-Plus guardrail terminal for use by cities, counties, and state departments of transportation, contractors and installers for roadway and highway safety.

13. At all relevant times, Trinity has manufactured, marketed, distributed and sold the ET-Plus guardrail terminal to the governmental entities and the businesses referenced above based in significant part on representations and guarantees by Trinity and its employee, officers and agents that the ET-Plus has been and is approved by the appropriate state and federal highway authorities (including the Federal Highway Administration).

14. At times relevant to this case, the ET-Plus has been represented by Trinity's officers, employees and agents to be a federally approved, energy-absorbing device installed at the terminal end of roadway guardrails.

15. At times relevant to this case, Trinity's ET-Plus has been represented by Trinity's officers, employees and agents to be one of the highest quality guardrail terminals on the market.

16. Based upon information and belief, the original production version of the ET-Plus guardrail terminal – which was not the version involved in the collision that is the subject of this case -- was originally designed and tested by and/or through Texas A&M University / Texas Transportation Institute.

17. The primary regulatory and industry authorities involved in the regulation of highway products such as guardrail terminals include the United States Department of Transportation, the Federal Highway Administration, the National Cooperative Highway Research Program ("NCHRP") and various state highway departments, including the Tennessee Department of Transportation.

18. These organizations establish certain standards and specifications related to the manufacture of highway products, including the ET-Plus guardrail terminals.

19. If any of Trinity's products were found not to be in compliance with these standards and specifications, Trinity (through its officers, employees and agents) knew that Trinity could not sell the products and, further, would be required to re-submit and re-qualify its products for use and installation on state and national highways.

20. Since approximately 2005, Trinity and its officers, employees, and agents have made representations to the primary regulatory and industry authorities that their highway products, including the ET-Plus guardrail terminals, are in substantial compliance with all applicable standards and specifications.

21. Based upon information and belief, the original production version of the ET-Plus guardrail terminal was initially approved by primary regulatory and industry authorities, including the Federal Highway Administration and the National Cooperative Highway Research Program, in or about January of 2000.

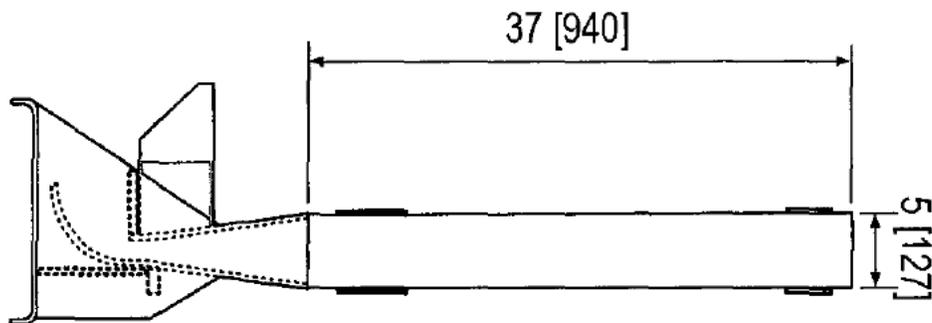
22. This approval was based, in part, on the design specifications provided to these authorities by Trinity and/or its predecessor entity and/or a related Trinity entity.

23. The original production version of the ET-Plus guardrail terminal included an extruder head that differed from the head used in a previous design, the ET-2000, in the size and shape of its face plate and in the omission or reduction of several of its non-structural components.

24. The original production of the ET-Plus guardrail terminal was produced by Trinity and/or Trinity's predecessor entity and/or a related Trinity entity from about 1999 until approximately 2004.

25. The original production of the ET-Plus guardrail terminal had four basic sections: an impact head, deflector, extruder throat and feeder chute.

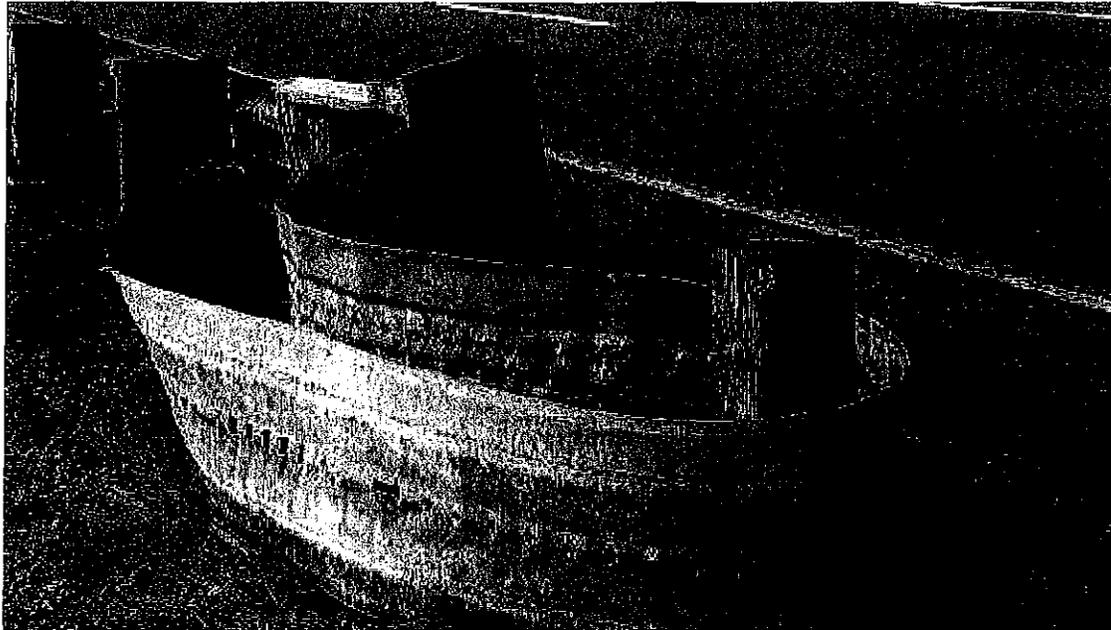
26. The feeder chute of the original ET-Plus production had a width of 5 inches and a length of 37 inches as is generally depicted below:



27. Based upon information and belief, the original production of the ET-Plus guardrail terminal met the design specifications created by the Texas Transportation Institute for Trinity Highway and Trinity Industries - the same design specifications that were presented to and approved by primary regulatory and industry authorities, including the Department of Transportation, the Federal Highway Administration, NCHRP and the TN DOT.

28. When impacted, the ET-Plus, as originally designed, created a dynamic compression plume as the terminal moves down the guardrail. The extruder head would plume the guardrail, flatten the guardrail, and deflect the flattened guardrail.

29. The original production of the ET-Plus was able to handle a dynamic compression plume. Based upon information and belief, when the original version of the ET-Plus was impacted, it generally worked as designed – i.e., the guardrail absorbed the impact as is generally depicted below:



30. In approximately 2004, Trinity modified the ET-PLUS guardrail terminal. In essence, the version of the ET-Plus guardrail terminal manufactured, distributed, marketed and sold after 2004, including at all times relevant to this case, is materially different than the original production of the ET-Plus guardrail terminal.

31. The post-2004 production version of the ET-Plus guardrail terminal is materially different than the design drawings and specifications created for the original ET-Plus by the Texas Transportation Institute / Texas A&M.

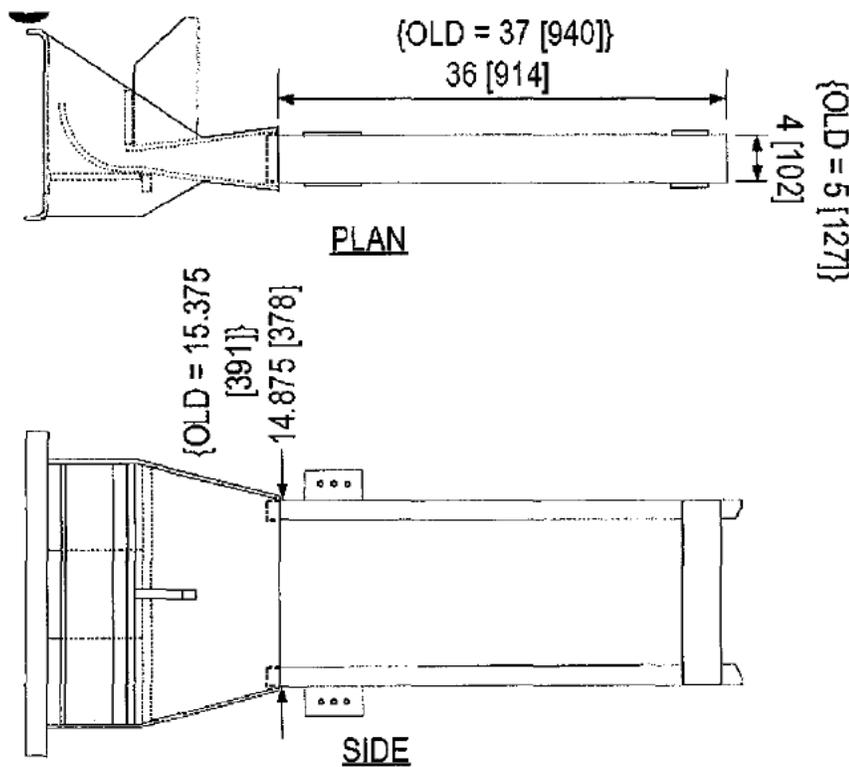
32. The post-2004 production version of the ET-Plus guardrail terminal is materially different than the design drawings and specifications that were presented (by Trinity and/or Trinity's officers, employees and/or agents) to and approved by primary regulatory and industry authorities, including the Department of Transportation, the Federal Highway Administration and the NCHRP.

33. The post-2004 production version of the ET-PLUS guardrail terminal has a feeder chute with a width of 4 inches as opposed to 5 inches.

34. The post-2004 production version of the ET-Plus guardrail terminal has a reduced rail height from 15.375 inches to 14.875 inches.

35. The post-2004 production version of the ET-Plus guardrail terminal has the rails inserted .75 inches deep into the extruder throat; the feeder chute did not intrude into the extruder throat on the original production version of the ET-Plus.

36. In the post-2004 production version, the ET-Plus impact plate, deflector and extruder throat are generally the same as the original production version of the ET-Plus, but the feeder chute is shorter, narrower and intrudes into the extruder throat. These differences are generally depicted in red in the diagram below:



37. In or about October of 2009, after the occurrence of the collision that is the subject of this action, Trinity (through its officers, employees and/or agents) sent another design approval request to the primary and regulatory industry authorities, including the Federal Highway Administration, for the ET-Plus guardrail terminal. Significantly, the version of the ET-Plus submitted at that time once again had a feeder chute with 5 inch wide feeder rails that did not intrude into the extruder head.

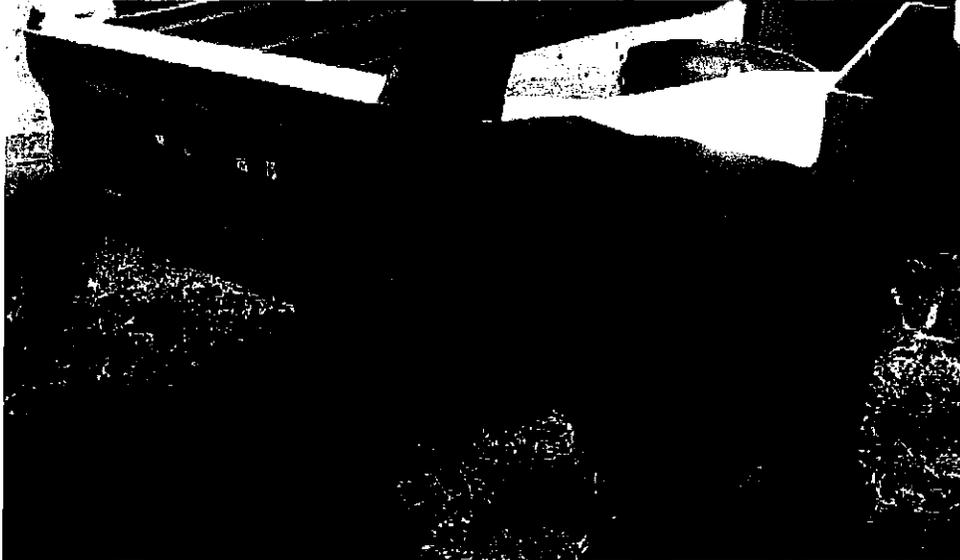
38. Accordingly, the version of the ET-Plus which has been submitted for approval to the referenced primary and regulatory industry authorities, both before and after the subject collision, is materially different from the ET-Plus system Trinity has manufactured, distributed, marketed and sold between 2005 and 2009, including the ET-Plus guardrail terminal that was involved in the subject collision on December 17, 2008.

39. The changes made and authorized by Trinity to the version of the ET-Plus guardrail terminal at issue in this case, which was manufactured, distributed, marketed and sold between approximately 2005 and 2009 (the “subject version of the ET-Plus guardrail terminal”) have critically affected the performance of the ET-Plus guardrail terminal when impacted by a vehicle.

40. The subject version of the ET-Plus guardrail terminal, with its production changes including the reduction in width of the feeder rails, height reduction within the extruder throat, and the reduction of its exit gap, causes the guardrail terminal to “throat lock” in the extruder throat during an impact.

41. When the subject version of the ET-Plus guardrail terminal “throat locks,” it is incapable of absorbing an impact.

42. Accordingly, the subject version of the ET-Plus guardrail terminal no longer creates a dynamic compression capable of pluming, flattening and deflecting a guardrail and fails to function as intended; a photograph of an example of such a failure is shown below:



43. Neither the production changes in the subject version of the ET-Plus guardrail terminal, including the reduction in width of the feeder rails, height reduction within the extruder throat, and the reduction of its exit gap, nor the subject version of the ET-Plus guardrail terminal which incorporates these changes have been approved by the primary and regulatory industry authorities referenced above, including but not limited to the Federal Highway Administration and the Tennessee Department of Transportation.

44. Neither the production changes in the subject version of the ET-Plus guardrail terminal, including the reduction in width of the feeder rails, height reduction within the extruder throat, and the reduction of its exit gap, nor the subject version of the ET-Plus guardrail terminal which incorporates these changes have been appropriately tested to determine the safety and

performance of this version of the guardrail terminal, either by Trinity, by third parties, or by any of the referenced primary and regulatory industry authorities.

45. On December 17, 2008, at approximately 7:15 a.m., Ms. Sabrena Carrier was traveling westbound along Highway 394 near its intersection of Earhart Road on her way to work and was driving her 2006 Honda Ridgeline in a safe and prudent manner.

46. Through no fault of her own, Ms. Carrier unforeseeably began to experience dizziness and blurred vision on account of a medical condition.

47. As Ms. Carrier's vehicle was heading down the straight portion of the roadway leading up to the curve just prior to the referenced intersection, on account of said condition, Ms. Carrier was unable to appreciate the curve. Accordingly, Ms. Carrier's vehicle continued going straight, such that the vehicle proceeded off the roadway and directly into the end of the guardrail terminal which had been affixed along side of the edge of the road into the curve just prior to the referenced intersection.

48. The guardrail terminal impacted by the vehicle Ms. Carrier was driving was intended to be manufactured, designed, installed, repaired, and/or maintained in a manner that would provide protection to the motoring public and prevent the end of the guardrail terminal or any portion of the guardrail from entering the passenger compartment of a vehicle with which it came into contact.

49. However, on account of the wrongful and negligent conduct by and/or attributable to each of the Defendants herein and/or their employees and/or agents, a portion of the subject guardrail did in fact penetrate the passenger compartment, striking Ms. Carrier's torso and causing her to suffer serious and fatal injuries.

50. The photograph attached as **Exhibit A** to this Complaint is a true and accurate representation of the manner in which the subject guardrail wrongfully penetrated the passenger compartment of Ms. Carrier's vehicle as is generally described above.

51. The impact of the guardrail against Ms. Carrier's torso and body caused Ms. Carrier to suffer immediate and horrible pain and discomfort, severe damage to her organs, internal bleeding and multiple fractures. Despite being treated at the scene and rushed for emergency treatment to Wellmont-Bristol Regional Hospital and despite being well-attended by the healthcare personnel at the scene and at the hospital, the referenced injuries ultimately were fatal and Ms. Carrier died approximately five hours after the collision.

52. Trinity acted fraudulently, recklessly, and/or with deliberate indifference by engaging in the dangerous, inexplicable, improper and unnecessary wrongful conduct described above, in that they fraudulently, recklessly, and/or with deliberate indifference made changes to the production version of the ET-Plus guardrail terminal between approximately 2005 and 2009 which caused and/or allowed a large number of guardrail terminals, including the guardrail terminal involved in the subject collision, to be manufactured, distributed, marketed and sold and placed into the stream of commerce while being unsafe, defective, unreasonably dangerous, non-conforming, and not approved as required by the primary and regulatory government and industry agencies referenced above.

53. Moreover, Trinity acted fraudulently, recklessly, and/or with deliberate indifference by engaging in the dangerous, inexplicable, improper and unnecessary wrongful conduct described above while at the same time failing to inform purchasers, governmental

entities, contractors, installers, and the public that the referenced production changes had been made.

54. Additionally, Trinity acted fraudulently, recklessly, and/or with deliberate indifference by engaging in the dangerous, inexplicable, improper and unnecessary wrongful conduct described above while at the same time making material misrepresentations to purchasers, governmental entities, contractors, installers, and the public that the referenced production versions of the ET-Plus guardrail terminals were safe for their intended use and were the same and/or substantially the same as the previous versions of the ET-Plus guardrail terminals that had been appropriately tested and approved by the appropriate governmental agencies.

55. Further, Trinity acted fraudulently, recklessly, and/or with deliberate indifference by engaging in the dangerous, inexplicable, improper and unnecessary wrongful conduct described above while at the same time wrongfully concealing from purchasers, governmental entities, contractors, installers, and the public that the referenced production versions of the ET-Plus guardrail terminals had not been appropriately tested or approved by the appropriate governmental agencies.

56. Trinity's fraudulent, reckless, and/or deliberately indifferent wrongful conduct falls within the meaning of the Tennessee Supreme Court's definition of the type of conduct that merits the award of punitive damages in this case as is set forth in Hodges v. S.C. Roof & Co., 833 S.W. 2d 896 (1992).

ADDITIONAL BASES FOR RECOVERY AGAINST THE DEFENDANTS

57. Based upon information and belief, the subject guardrail and its component parts were negligently and wrongfully manufactured, distributed, marketed and sold by Defendant Trinity such that the ET-Plus guardrail terminal involved in the subject collision and its component parts were placed into the stream of commerce by Trinity in a defective and/or unreasonably dangerous condition within the meaning of T.C.A. § 29-28-101, *et. seq.*, the Tennessee Product Liability Act.

58. Further, Trinity wrongfully concealed from purchasers, installers, governmental entities, and/or those responsible for repairing and/or maintaining roadways, including those persons and entities who had those responsibilities with regard to the roadway where the subject collision occurred, that the subject production version of the ET-Plus guardrail terminal was unsafe, defective, unreasonably dangerous, non-conforming, not tested, and not an approved/certified product.

59. Moreover, Trinity wrongfully made misrepresentations to purchasers, installers, governmental entities, and/or those responsible for repairing and/or maintaining roadways, including those persons and entities who had those responsibilities with regard to the roadway where the subject collision occurred, that the subject production version of the ET-Plus guardrail terminal was safe, had been appropriately tested, was approved, and conformed to all applicable government and industry standards, when in fact such representations were not true. These misrepresentations were relied upon by the persons and entities referenced herein; it was foreseeable that such misrepresentations would be relied upon by said persons and entities, and it was known and understood that said persons and entities were performing responsibilities on

behalf of the motoring public, including Sabrena Carrier, when said persons and entities were receiving and relying upon Trinity's misrepresentations in purchasing and installing the referenced production version of the ET-Plus guardrail terminal.

60. Additionally, the subject guardrail and its component parts were manufactured, assembled, sold and/or designed by Defendant Trinity in a manner which breached express and/or implied warranties of merchantability and/or fitness for its intended purpose.

61. Each of the wrongful acts and omissions stated above, which were committed by Trinity and its officers, employees and agents, constituted a proximate cause of the injuries, damages and wrongful death suffered by decedent Sabrena Carrier and, therefore, Plaintiff herein.

62. Plaintiff specifically states that with regard to the fraudulent, reckless, wrongful and deliberately indifferent conduct on the part of Trinity and its officers, employees and agents concerning the changes to the ET-Plus guardrail terminal and the characteristics of the ET-Plus guardrail terminal generally outlined above that were not certified and/or approved by the appropriate state and federal governmental agencies and regulatory authorities and that made the subject version of the ET-Plus guardrail terminal defective and unreasonably dangerous as aforesaid, those matters were wrongfully and improperly concealed by Trinity and its officers, employees and agents such that Plaintiff, in the exercise of reasonable diligence, was unable to discover such matters until on or after November 4, 2011.

63. Based upon information and belief, Defendant Tennessee Guardrail, Inc. ("Tennessee Guardrail") and/or James H. Drew Corporation ("James H. Drew") negligently and wrongfully selected and/or installed the subject guardrail terminal in a manner which caused

and/or contributed to the subject guardrail terminal and/or guardrail components not functioning as intended. Further, Plaintiff specifically alleges that the acts and omissions of the officers, employees and agents of Tennessee Guardrail are attributable to James H. Drew pursuant to the doctrine and principles of the law of agency.

64. The negligence of Tennessee Guardrail and James H. Drew referenced above constituted a proximate cause of the injuries, damages and wrongful death suffered by decedent Sabrena Carrier and, therefore, Plaintiff herein.

65. Based upon information and belief, at all relevant times, agents and employees of the State of Tennessee, while acting in concert with agents and/or employees of Tennessee Guardrail and James H. Drew, and/or while acting as agents of Tennessee Guardrail and James H. Drew, negligently selected and purchased the subject guardrail terminal in a defective and/or unreasonably dangerous condition, such that it posed a danger to motorists such as decedent Sabrena Carrier.

66. Such negligence attributable to the agents and/or employees of the State of Tennessee, while said individuals were acting in concert with agents and/or employees of Tennessee Guardrail and James H. Drew, and/or while said individuals were acting as agents of Tennessee Guardrail and James H. Drew, constituted a proximate cause of the injuries, damages and wrongful death suffered by decedent Sabrena Carrier and, therefore, Plaintiff herein.

67. Plaintiff further cites the following wrongful conduct attributable to the Defendants which constitutes the proximate, legal cause of Plaintiff's damages.

(a) As is generally set forth above, the subject guardrail terminal was manufactured, distributed, marketed and sold in an unreasonably dangerous and/or defective condition within

the meaning of the Tennessee Products Liability Act (T.C.A. Section 29-28-101 *et. seq.*). Accordingly, Trinity is strictly liable to the Plaintiff for the injuries and wrongful death sustained by Ms. Carrier in the subject collision on account of the conduct of Trinity's officers, employees and agents in the manufacture, distribution, marketing and sale of the subject ET-Plus guardrail terminal and the referenced component parts, as such conduct constitutes a proximate, legal cause of Sabrena Carrier's severe injuries and wrongful death and Plaintiff's resulting damages.

(b) Trinity is liable in warranty as aforesaid, as the referenced breaches of express and implied warranties of merchantability and/or fitness for the product's intended purpose constitutes a proximate, legal cause of the decedent's and Plaintiff's injuries and damages.

(c) As set forth above, Trinity wrongfully and/or deliberately concealed from purchasers, installers, roadway designers, and/or those responsible for repairing and/or maintaining the roadway where the subject collision occurred (as well as other roadways) that the subject version of the ET-Plus guardrail terminal (and the ET-Plus guardrail terminal involved in the subject collision) was unsafe, non-conforming, not tested, and not approved/certified. Trinity's conduct in that regard, through its officers, employees and/or agents, constitutes a proximate, legal cause of the decedent's and Plaintiff's damages.

(d) Plaintiff specifically alleges that the subject version of the ET-Plus guardrail terminal (and the ET-Plus guardrail terminal involved in the subject collision) did not comply with federal and state regulations and statutes applicable to such guardrail terminals, that Trinity had a duty to comply with said regulations and statutes, that decedent Sabrena Carrier was within the class of persons that said regulations and statutes were intended by the respective legislative bodies and governmental agencies to protect, that Trinity's violations of said regulations and

statutes constitutes negligence *per se*, and that such negligence was the proximate cause of Plaintiff's injuries; further, Plaintiff specifically alleges that Trinity's manufacture, distribution, marketing and sale of the referenced guardrail terminal when the referenced guardrail did not comply with applicable federal and state regulations and statutes and had not been certified as such renders Trinity liable to Plaintiff in this matter as a matter of law.

(e) Further, all the Defendants herein are liable in negligence for failing to exercise due care in the manufacture, distribution, marketing, testing, analysis, installation, sale, purchase and selection of the subject guardrail terminal, which negligence constitutes a proximate, legal cause of decedent's and Plaintiff's damages. Plaintiff also specifically alleges that the acts and omissions committed by the Defendants and/or Defendants' officers, employees and agents violated the laws and regulations of the State of Tennessee and the United States (including but not limited to the rules and regulations of the Federal Highway Administration), which violations constitute negligence *per se*. Each such wrongful act constitutes a proximate, legal cause of the decedent's and Plaintiff's injuries and damages.

68. Plaintiff further alleges that the wrongful conduct attributable to the Defendants on account of the actions and omissions by the Defendants' officers, employees and/or agents which is generally described herein violates the Tennessee Consumer Protection Act, T.C.A. §§ 47-18-104 (5) and (7) and that those violations also constitute a proximate, legal cause of decedent's and Plaintiff's damages.

69. Plaintiff specifically alleges that the conduct of Trinity as is generally described above was reckless and exhibited a willful disregard for the safety of the motoring public. Such

recklessness and willful disregard for safety constitutes a proximate, legal cause of Plaintiff's damages.

70. Plaintiff specifically alleges that the acts and omissions of Trinity and Trinity's officers, employees and agents described herein were fraudulent, reckless, and/or deliberately indifferent and constitute a proximate, legal cause of the decedent's and Plaintiff's damages, such that said conduct justifies an award of punitive damages in this case.

71. Plaintiff specifically alleges that the version of the ET-Plus guardrail terminal referenced herein and the subject guardrail terminal were not manufactured, marketed, distributed, sold or installed "in accordance with the plans and specifications" of the State of Tennessee within the meaning of T.C.A. § 12-4-503 because said guardrail terminal failed to comply with state and federal regulations and statutes governing such guardrail terminals; as has been stated previously, the failure of the referenced guardrail terminals, including the subject guardrail terminal, to comply with said regulations and statutes and the characteristics of the guardrail terminals outlined herein which were inconsistent with said regulations and statutes were a proximate cause of the subject guardrail terminal forming a spear, penetrating decedent Sabrena Carrier's passenger compartment, violently striking Sabrena Carrier, and causing her to sustain serious and fatal injuries, as well as Plaintiff's injuries and damages as are generally referenced herein.

DAMAGES

72. As a direct and proximate result of the individual and/or joint and several liability of the Defendants, whether their actions or omissions are negligent, negligent *per se*, willful and wanton, and/or grossly negligent, the Plaintiff avers that she is entitled to recover damages from

the Defendants for Sabrena Carrier's pain and suffering, loss of enjoyment of life, medical expenses, funeral expenses, loss of the pecuniary value of the life of Sabrena Carrier, losses in society and companionship, and all other damages and expenses allowed under Tennessee law.

73. Further, as a direct and proximate cause of the wrongful conduct attributable to Trinity as is generally described above, Trinity is liable to Plaintiff for punitive damages in the amount the trier of fact deems appropriate and just.

74. In addition, Plaintiff Sandra Lester respectfully requests restitution and damages on behalf of the decedent's minor son, A.R.C., for the loss of love, society, affection, and companionship of his mother, Sabrena Carrier.

75. In addition, Plaintiff Sandra Lester seeks damages for the loss of love, society, affection, and companionship of her daughter, Sabrena Carrier.

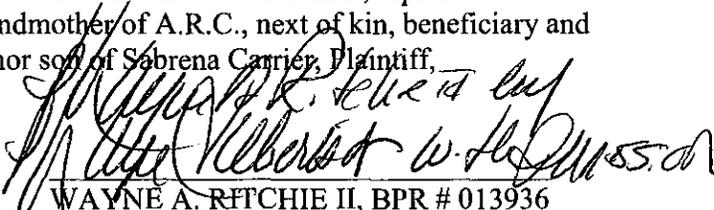
WHEREFORE, Plaintiff sues the Defendants jointly and severally, for compensatory damages in an amount that the trier of fact deems just, not to exceed the sum of eight million dollars (\$8,000,000), as well as punitive damages against Defendant Trinity in the amount the trier of fact deems appropriate and just, not to exceed the greater of: (a) five percent (5%) of the gross revenue of Trinity and/or its related entities which manufactured, distributed, marketed and/or sold the subject version of the ET-Plus guardrail terminal during the relevant time period (2005 through 2009); or (b) five times the amount awarded by the jury for compensatory damages in this case. Further, Plaintiff moves for and requests that all costs of the Court and all discretionary costs, including but not limited to all expert fees, court reporter fees, exhibit expenses, deposition expenses, any other litigation expenses, and any and all other costs allowable by statute, common law, and/or pursuant to Rule 54 of the Tennessee Rules of Civil

Procedure, be taxed to the Defendants immediately upon entry of any judgment in this cause; Plaintiff moves for and requests all pre-judgment interest and post-judgment interest allowable by common law or statute as part of her relief requested herein; Plaintiff requests that a jury be impaneled to hear this cause; and Plaintiff requests such other, further relief as this Honorable Court deems appropriate.

Respectfully submitted this 28th day of September, 2012.

SANDRA LESTER, as mother and personal representative / administratrix of the Estate of Decedent SABRENA CARRIER, representative and grandmother of A.R.C., next of kin, beneficiary and minor son of Sabrena Carrier, Plaintiff,

By:


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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been served this 28th day of September, 2012, upon the parties in interest herein by first-class mail as follows:

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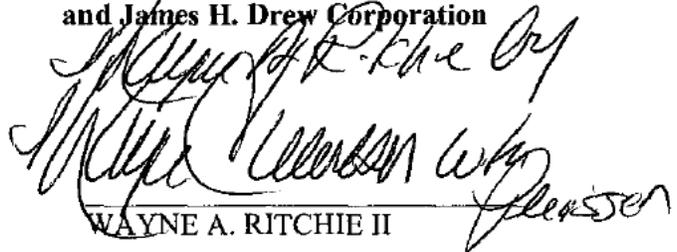
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EXHIBIT A

