

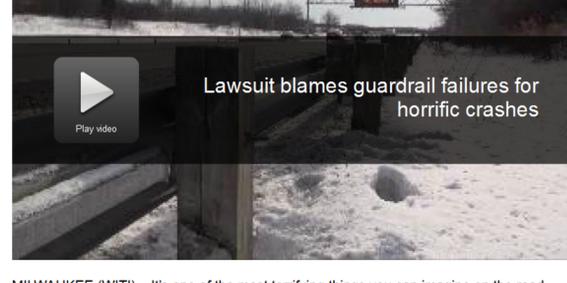
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High wind ADVISORY for all of southeast Wisconsin begins at 6 p.m.

Lawsuit blames guardrail failures for "horrific" crashes

Posted on: 9:00 pm, February 11, 2014, by Stephen Davis and Bryan Polcyn, updated on: 09:27am, February 12, 2014

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MILWAUKEE (WITI) – It's one of the most terrifying things you can imagine on the road. Your car strikes the butt end of a guardrail at 65 miles per hour and a shaft of steel penetrates the exterior and goes straight through the cabin. It's not supposed to happen anymore, but it does.

Now, a nasty court battle is raising serious concerns about the effectiveness of a common safety device at the end of most sections of guardrail.

- KEY DOCUMENTS:
- Trinity's [patent infringement lawsuit](#) against Harman
- Harman's [whistle-blower lawsuit](#) against Trinity
- Trinity's [defamation lawsuit](#) against Harman
- Harman's [timeline of events](#)
- Trinity's [letter to state DOT's](#) about Harman's allegations
- Trinity's [official statement](#) to FOX 6 News

You drive past them everyday, and probably never even notice those black and yellow striped rectangles at the front end of most roadside guardrails. They are part of a special safety device called a 'guardrail end terminal.'

A federal whistle-blower says one particular model is failing at an alarming rate. And he came all the way to Wisconsin to prove it.

"How many more people has got to die before something's done?," asks Joshua

Harman, a guardrail engineer from Virginia. He is the plaintiff in a federal ["False Claims Act" lawsuit](#) against Texas-based Trinity Industries, maker of a popular model of guardrail end terminals.

"You see them everywhere," says Steven Lawrence, an attorney representing Harman in the federal case.

The guardrail end terminals — or 'heads' as they're called by engineers — are designed to absorb the energy of a crash (see [1999 crash test video](#)), safely slowing you down, while preventing the rail from spearing your car and impaling you.

"It takes the guardrail and pushes it out to the side of the vehicle," Lawrence explains, "and slows the vehicle to a controlled stop."

Harman and Lawrence say, in most cases, you can hit one of these devices at 60 miles per hour and walk away from the crash. If, that is, you're hitting the right model.

"The original design was an ingenious product," says Harman. "I have repaired them and seen people survive accidents they shouldn't have."

Actually, Harman did more than just repair them. A few years ago he started making what Trinity calls a "copy" of its patented ET-Plus guardrail terminals. Trinity sued Harman for [patent infringement](#) and Harman's companies stopped production.

"They're idle at this point," Harman says.

Now, Harman is a man on a mission to prove Trinity's own guardrail terminals are dangerous. In 2012, he [filed a lawsuit](#), accusing Trinity of making secret modifications to the ET-Plus that were never disclosed to the [Federal Highway Administration](#).

"They took a product that was working just fine and, in order to make more money, they changed it," Lawrence says.

According to the lawsuit, sometime between 2002 and 2005, Trinity reduced the size of the ET Plus feeder channel from five inches wide to four. More important, says Lawrence, is what they did to the inside of the terminal.

"They essentially shrunk it," Lawrence says.

To demonstrate why that matters, Harman took the Fox 6 Investigators for a ride on the Milwaukee freeway system. On I-43 just south of Mequon Road, he shows us a competing guardrail head — the SKT-350 — that was recently involved in a low-speed crash. SKT stands for "Sequential Kinking Terminal," which describes the manner in which the device absorbs a car's energy, by kinking the guardrail's W-beam as it is forced through a feeder chute.

"You can actually see right there they slid right into it," Harman says, as he points to a guardrail head that's pushed in about 8 feet, and cocked just slightly to the right. "So the product worked perfectly. Still facing traffic."

Just a few hundred feet down the interstate, he spots a 4-inch ET Plus. It works by flattening the W-shaped guardrail like a pancake, then shooting it out the side. But Harman says because of the shrunken internal dimensions of the feeder chute, the guardrail often gets stuck inside the ET-Plus guide chute.

"Right in here is where it chokes," Harman says, as he points to a narrow spot in the throat of the device. The result?

"These terminals are failing at an alarming rate," Harman says.

From Texas to Maryland and Oklahoma to Tennessee, guardrails buckle and crumple and spear. Drivers are seriously injured. Sometimes killed. And Harman claims each case is further proof that the smaller [ET Plus](#) is failing, in some cases impaling drivers with the very guardrails that were meant to protect them.

Last June, firefighters in Gurnee, Illinois, extricated a man from mangled wreckage on Highway 41.

"The terminal locked up," Lawrence says. "His car flipped around, and the guardrail went through his driver side door, essentially cutting him in two."

Miraculously, 22-year-old Tim Benson survived.

"He will never be the same," Lawrence said.

Five months earlier, a woman in Kingsport, Tennessee hydroplaned in a rainstorm, striking a four-inch ET Plus.

"The energy from the car flipped her car in such a violent manner that it killed her," Lawrence says.

The driver was 42-year-old Elizabeth Elsevier, whose parents live in Germantown, Wisconsin. Her sister, who also lives in Wisconsin, tells FOX 6 News that the family fully supports the [lawsuit](#) that's been filed against Trinity on Elizabeth's behalf in Tennessee. However, they decided as a family not to discuss the matter in a

television news story.

"It's horrific what's happening to these families," Harman says.

Trinity says it's impossible to tell from photos alone if a guardrail terminal failed.

The [company emailed Fox 6 News a statement](#) that says Trinity "has a high degree of confidence in the performance of the ET Plus system," which it says was successfully crash-tested in 2005 with the four inch channels. Trinity points out that, even after reviewing Harman's claims, the Federal Highway Administration "re-affirmed" its acceptance of the ET Plus in 2012.

"It's embarrassing to the government," Harman says, "so they really want this to go away as bad as Trinity does."

Harman certainly isn't going away. In the past two years, he's been interviewed for television stories in Dallas, Atlanta, San Diego, San Francisco, Phoenix, and West Palm Beach. And he's posted his entire photographic database on a website called [Fallingheads.com](#).

Trinity says Harman's claim that the pictures represent a failure of the ET Plus is "false and misleading." Trinity has [sued Harman for defamation](#) twice, but later dismissed both suits voluntarily.

"They dismissed their own case," Harman says.

One thing is indisputable. Trinity did make changes to the ET Plus.

The question is why.

"Why did you change this?" Harman asks. "Who told you to change it? The answer is resounding. 'I don't remember.'"

Harman and his legal team believe they know the answer. They say Trinity used to market its end terminals to the government as being re-usable, but after shrinking the dimensions, Lawrence says it is far less likely a terminal can be salvaged after a crash.

"So now, every time there's an accident with the ET-Plus, Trinity sells a new terminal," he says.

It's the type of sinister accusation that could get you sued. If, that is, lawsuits are the kind of thing that scare you.

"I know I'm not wrong. They know I'm not wrong," Harman says.

Trinity argues that this whole media campaign by Harman is simply retribution for the patent infringement lawsuit. Harman insists it is not payback, but rather a genuine concern about a defective product. His federal whistle-blower case is still ongoing.

The Wisconsin Department of Transportation says it is still monitoring what is happening on a national level, but — at least for now — the ET-Plus remains one of two "energy absorbing terminals" or EAT's that are approved for use on Wisconsin roads.

Last winter, Trinity Industries [sent a letter](#) to all state DOT's — including Wisconsin — to head off the public criticism from Harman. The letter explains that the reduction from a 5-inch to a 4-inch guide channel was done at the recommendation of researchers at the Texas A&M Transportation Institute, which developed the system in the first place.

Trinity's letter claims the size reduction was intended to "enhance the performance" of the system by improving the alignment around the guardrail. So why didn't Trinity tell the government about that change for 7 years?

The letter says Texas A&M researchers "inadvertently omitted" a drawing that reflected those changes when applying for approval in 2005.

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Topics: Accidents, guardrails, whistleblower

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2 comments

Jason T. Combs
February 11, 2014 at 10:25 pm
this is unacceptable, my wife drives from southern racine to children's hospital every day. all of a sudden i want her in a big suv vehicle instead of her tiny gas sipping car.

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JonnyB
February 12, 2014 at 8:53 pm
If the guy is so concerned about safety, maybe he (and his family) should wear their seat belts.

Reply Report comment

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IN THE CIRCUIT COURT FOR CAMPBELL COUNTY, TENNESSEE

**ELIZABETH ELSEVIER,
Deceased, By
BRIAN ELSEVIER,
Surviving Spouse and
Personal Representative**

No. 15614

And

**BRIAN ELSEVIER,
Individually**

Plaintiffs

vs.

**Trinity Industries, Inc.
a Delaware Corporation and
Trinity Highway Products, LLC,
A Delaware Limited Liability Company, and
John Doe Construction Company No.1, and
John Doe Maintenance Company No. 1, and
John Doe Supply Company No. 1**

Defendants.

FILED
DATE: 1-13 2014 TIME 2:08 Pm
CIRCUIT COURT — CAMPBELL COUNTY
BOBBY W. VANN CLERK
John B. O
DEP. CLERK (D.C.)

COMPLAINT

COME NOW THE PLAINTIFFS, BRIAN ELSEVIER, surviving spouse and personal representative of the decedent, ELIZABETH ELSEVIER, and BRIAN ELSEVIER, individually, and file this action against defendants, Trinity Industries, Inc., a Delaware Corporation and Trinity Highway Products, LLC, a Delaware Limited Liability Company and

John Doe Construction Company No. 1, and John Doe Maintenance Company No. 1, and John Doe Supply Company No. 1 and would show this Court as follows:

1. Plaintiff, Brian Elsevier, surviving spouse and personal representative of plaintiff and decedent, Elizabeth Elsevier, is a citizen and resident of Hawkins County, Tennessee, residing at 1044 Timberidge Trail, Kingsport, Tennessee 37660.

2. Defendant Trinity Industries, Inc. (hereinafter sometimes "Industry") is a Delaware corporation authorized to do business in the State of Texas with its principal office located at 2525 Stemmons Freeway, Dallas, Texas 75207.

3. Trinity Highway Products, LLC (hereinafter sometimes "Products") is a Delaware Limited Liability Company authorized to business in the State of Texas with its principal office located at 2525 Stemmons Freeway, Dallas, Texas 75207.

4. Both Trinity Industries' and Trinity Highway Products' agent for service in Tennessee is CT Corp System, 800 S Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

5. John Doe Construction Company No. 1 is reasonably believed to be a contractor to the State of Tennessee and installs and/or maintains and/or repairs guardrail systems in Tennessee and more specifically the guardrail system which is the subject of this lawsuit.

6. John Doe Maintenance Company No. 1 is reasonably believed to be a contractor to the State of Tennessee and installs and/or maintains and/or repairs guardrail systems in Tennessee and more specifically the guardrail system which is the subject of this lawsuit.

7. John Doe Supply Company No. 1 is reasonably believed to be a contractor or supplier of guardrail systems to John Doe Maintenance Company.

8. The precise identify and addresses of the 3 John Doe defendants are unknown to the Plaintiffs at this time. This Complaint will be amended in a timely manner at such time as the Plaintiffs are able to obtain from the State of Tennessee the identities of these defendants.

9. The motor vehicle accident giving rise to this cause of action occurred in Campbell County, Tennessee on January 13, 2013.

BACKGROUND

10. Trinity Industries, Inc. is the parent corporation of Trinity Highway Products, LLC and as such controls Trinity Highway Products, LLC.

11. Trinity Highway Products, LLC is in the business of manufacturing and selling various highway safety and construction products for use across the United States and

specifically in Tennessee and more specifically manufactures and sells the ET-Plus guardrail end terminal (“ET-Plus”) under an exclusive licensing agreement from Texas A & M University.

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

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

14. The ET-Plus at issue is actually a modified version of what was originally designed and market as the ET-2000.

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

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

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

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

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

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

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

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

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

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

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

26. Once "throat lock" occurs, as is the case in this action, the energy of the crash is diverted elsewhere, and as in this case, violently stops or redirects the vehicle in a manner causing serious injury or death.

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

FACTS

28. Paragraphs 1 through 27 above are incorporated hereby as though fully and completely set forth.

29. At or about 1:15 p.m. on Sunday, January 13, 2013, Decedent Elizabeth Elsevier was traveling southbound on I-75 in Campbell County near the 157-mile marker in her Toyota 4-Runner automobile.

30. At the time and place described in the preceding paragraph Decedent Elizabeth Elsevier lost control of her vehicle which impacted with the ET-Plus end terminal at issue.

31. The impact described above resulted in the failure of the ET-Plus end terminal to properly extrude and, rather than performing properly, caused the guardrail to lock inside the end terminal and fail to dissipate the energy of the vehicle in a safe manner and bring it to safe stop.

32. As a result of the failure of the terminal and guardrail, decedent died before arriving at Lafollette Medical Center.

COUNT ONE
NEGLIGENCE AS TO TRINITY INDUSTRIES, INC. AND
TRINITY HIGHWAY PRODUCTS, LLC

33. Paragraphs 1 through 34 are incorporated by reference as though fully and completely set forth.

34. Defendant Trinity Industries, Inc. and Trinity Highway Products, LLC changed, modified and altered their ET-Plus guardrail system, and more specifically, its end-cap unit which resulted in the guardrail at issue, and guardrails across the United States, failing and rather than properly absorbing the energy of an impact, it locks up and injures or kills vehicle occupants due to the trauma of the sudden stop, by catapulting the vehicle, redirecting it in an unsafe manner, or causing the guardrail to impale the vehicle.

35. Defendants Trinity Industries, Inc. and Trinity Highway Products, LLC knew of multiple failures of the altered ET-Plus end-caps and failed to disclose either the modifications to the product or the dramatic increase in severe, even death-producing collisions occurring across the United States.

36. As a direct and proximate cause of Defendant Trinity Industries, Inc.'s and Trinity Highway Products, LLC's negligence/gross negligence, Elizabeth Elsevier was fatally injured.

COUNT TWO

NEGLIGENCE AS TO JOHN DOE CONSTRUCTION COMPANY NO. 1, JOHN DOE MAINTENANCE COMPANY NO. 1, AND JOHN DOE SUPPLY COMPANY NO. 1

37. Paragraphs 1 through 38 are incorporated by reference as though fully and completely set forth.

38. John Doe Construction Company No. 1 was responsible for the inspection and installation of guardrail systems, and more specifically the guardrail system at issue in this lawsuit.

39. John Doe Maintenance Company No. 1 was responsible for the inspection and repair of guardrail systems, and more specifically the guardrail system at issue in this lawsuit.

40. John Doe Supply Company No. 1 was responsible for inspecting the guardrail system components and end terminal it supplied to John Doe Maintenance Company No. 1 for use in repairs and replacement of guardrail systems.

41. John Doe Construction Company No. 1 failed and was negligent in the inspection and installation of the guardrail system at issue in this lawsuit.

42. John Doe Maintenance Company No. 1 failed and was negligent in the inspection, repair and maintenance of the guardrail system at issue in this lawsuit.

43. John Doe Supply Company No. 1 failed and was negligent in the inspection of the guardrail system at issue in this lawsuit.

44. The negligence of John Doe Construction No. 1, John Doe Maintenance Company No. 1, and John Doe Supply Company No.1 in the performance of their duties, individually and/or collectively were the proximate cause of the fatal injuries to Elizabeth Elsevier.

COUNT FOUR

PRODUCT LIABILITY

45. Paragraphs 1 through 44 are incorporated as though fully and completely forth.

46. Defendants Trinity Industries, Inc. manufactured and sold the defective ET-Plus that caused Decedent's death.

47. Defendant John Doe Supply Company No. 1 purchased the defective ET-Plus that caused Decedent's death and sold it to John Doe Maintenance Company No. 1.

48. Defendant John Doe Maintenance Company No. 1 purchased the defective ET-Plus that caused Decedent's death, installed it, and was compensated for the terminal and installation by the Tennessee Department of Transportation.

49. Plaintiffs allege that the ET-Plus guardrail (terminal) involved in this cause of action was in a defective and unreasonably dangerous condition at all times herein material, including, but not necessarily limited to, the time of design, the time of manufacture, the time of installation, the time of this accident and the time it was placed into the stream of commercial in Tennessee, as contemplated by T. C. A. 29-28-102 and 29-28-105.

50. The plaintiffs allege that the defendants, Trinity Industries, Inc. and Trinity Highway Products, LLC are liable both under principles of negligence and that additionally they are strictly liable in tort both under the Tennessee Products Liability statutes.

DAMAGES

51. Paragraphs 1 through 50 are incorporated hereby as though fully and completely set forth.

52. As a direct and proximate result of the negligence of the defendants, individually or collectively, Decedent Elizabeth Elsevier sustained significant personal injuries,

including severe physical and emotional injuries to be more fully detailed at trial, from which the Plaintiff is entitled to recover.

53. As a direct and proximate result of the negligence of the defendants, Plaintiff has incurred special damages related to medical and other emergency response and treatment including but not necessarily limited to medical bills and expenses.

54. As a direct and proximate result of the negligence of defendants, Plaintiff is seeking the full value of the life of Decedent Elizabeth Elsevier who leaves behind her husband, Plaintiff Brian Elsevier and three minor children: Hallie, age 12; Eva, age 10; and Eliza, age 7.

55. Plaintiff, Brian Elsevier, as surviving spouse and personal representative of decedent, Elizabeth Elsevier, has incurred damages and expenses for the wrongful death of the decedent, in accordance with T.C.A. 20-5-105 et. seq., and the common law of the State of Tennessee, including the decedent's injuries, agony and pain and physical suffering, funeral expenses, the pecuniary value of her life, loss of enjoyment of her life, loss of companionship and consortium of her family members, and such other damages as the law allows.

56. Plaintiff, Brian Elsevier, alleges that on the day of this accident and at all times herein material, he was the lawfully wedded husband of the deceased plaintiff, Elizabeth Elsevier, and that as a result of the injuries suffered by his wife, he has been caused to lose her services and consortium.

57. The plaintiffs aver that as a result of the collision between the vehicle and the guardrail, their automobile was damaged and that they have incurred expense in the repair and/or loss of value of the vehicle, that they have lost the use of said vehicle for a length of time, and that the value of the vehicle has been diminished by this accident.

58. Plaintiffs allege that all of their losses and damages as hereinabove set forth are the direct, proximate and sole result of the negligent acts and/or omissions of the Defendants through their agents, servants and/or employees and the plaintiffs are without fault.

WHEREFORE, having fully and completely set forth her complaint against Defendants, individually and/or collectively, Plaintiff prays for the following relief:

- a. For trial by jury; and
- b. For judgment against defendants, individually and/or collectively for Decedent Elizabeth Elsevier's medical and other special damages to be proven with certainty at trial; and
- c. For judgment against defendants, individually and/or collectively for Decedent Elizabeth Elsevier's general damages to include her physical and emotional fear, anxiety, pain and suffering incurred prior to her death and to be proven with additional certainty at trial;
- d. For judgment against defendants, individually and/or collectively for the full value of the life of Decedent Elizabeth Elsevier; and
- e. For judgment against defendants, individually and/ collectively for all losses individually of plaintiff, Brian Elsevier and all losses of Elizabeth Elsevier, by Brian Elsevier,

Surviving Spouse and Personal Representative, in the amount of \$10,000,000 (Ten Million Dollars).

f. For such other and further relief as this Court deems just and proper including, but not necessarily limited to, discretionary costs and litigation costs.

Respectfully submitted this 13th day of January, 2014.



Gary L. Adkins
BILL HOTZ & ASSOCIATES
Attorney for Plaintiffs
6004 Walden Drive
Knoxville, TN 37919
865.637.8281

COST BOND

We hereby acknowledge ourselves as surety for all costs, taxes and damages in this cause in accordance with T. C. A. 20-12-120.

This the 13th day of January, 2014.

BILL HOTZ & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read "Bill Hotz", is written over a horizontal line. The signature is stylized and cursive.

CLAIMS COMMISSION OF THE STATE OF TENNESSEE

IN RE:

**ELIZABETH ELSEVIER,
Deceased, By
BRIAN ELSEVIER,
Surviving Spouse and
Personal Representative**

And

**BRIAN ELSEVIER,
Individually**

Plaintiffs

No. _____

RECEIVED

JAN 13 2014

**DIVISION OF
CLAIMS ADMINISTRATION**

COMPLAINT

Come the plaintiffs, Elizabeth Elsevier, deceased, by Brian Elsevier, surviving spouse and personal representative of the decedent, and Brian Elsevier, individually, and would show as follows:

1. Plaintiff, Brian Elsevier, surviving spouse and personal representative of plaintiff and decedent, Elizabeth Elsevier, is a citizen and resident of Hawkins County, Tennessee, residing at 1044 Timberidge Trail, Kingsport, Tennessee 37660. This cause of action for damages is brought against the State of Tennessee pursuant to T.C.A. 9-8-301 et seq. and other statutory and common law of the State of Tennessee.

2. The plaintiffs would show that on the early afternoon of January 13, 2013, at approximately 1:35 pm, Elizabeth Elsevier was operating a 1999 Toyota 4-Runner vehicle a in safe, cautious and proper manner in a southerly direction on Interstate 75 South near Mile

Marker 157 in Campbell County, Tennessee. As the plaintiff proceeded in a safe and cautious manner in a heavy rain, suddenly and without warning the vehicle began to slide out of control and traveled off the roadway and crashed into the end of a guardrail which had been constructed and installed alongside the interstate highway.

3. The plaintiffs aver that as a result of the aforesaid occurrence, Elizabeth Elsevier sustained severe, painful, catastrophic and fatal injuries as more fully described hereinafter.

4. The plaintiffs aver that as a proximate result of the collision between the vehicle and the guardrail and the guardrail's failure to collapse upon impact or otherwise function properly, Elizabeth Elsevier, sustained severe, painful and fatal injuries, resulting in severe pain and suffering, requiring her to come under the care of medical professionals and resulting in her death.

5. Plaintiffs aver that their losses and injuries as hereinbefore and hereinafter described occurred as a direct and proximate result of the negligent acts and/or omissions of the State of Tennessee and its agents, servants and/or employees including, but not necessarily limited to, employees, servants and agents of the Tennessee Department of Transportation. Specifically the plaintiffs would allege that the State of Tennessee and its agents, servants and/or employees, including, but not necessarily limited to the Department of Transportation, did not exercise reasonable care under all attending circumstances in the planning, designing, constructing, installing and/or maintaining of the guardrail into which the vehicle of the plaintiffs crashed. The plaintiffs would allege that the guardrail should have and would have collapsed upon impact with the plaintiffs' vehicle had said guardrail been properly

planned, designed, constructed, installed and/or maintained. The plaintiffs would aver that the State of Tennessee and its agents, servants and/or employees are guilty of negligence as regards the planning, designing, constructing, installation and maintaining of said guardrail. Had the guardrail collapsed upon impact with the plaintiffs' vehicle, losses and injuries would have been greatly reduced and minimized.

6. The plaintiffs further aver that State of Tennessee and the Tennessee Department of Transportation were put on notice and were aware of the defective nature of the guardrail terminal involved in this fatal crash. The State of Tennessee and the Tennessee Department of Transportation were specifically warned of certain modifications of the guardrail terminal. They expressed concerns, but took no action whatsoever to replace existing terminals or prevent future installation of the dangerous and defective terminals.

7. Plaintiff, Brian Elsevier, as surviving spouse and personal representative of decedent, Elizabeth Elsevier, has incurred damages and expenses for the wrongful death of the decedent, in accordance with T.C.A. 20-5-105 et. seq., and the common law of the State of Tennessee, including the decedent's injuries, agony and pain and physical suffering, funeral expenses, the pecuniary value of her life, loss of enjoyment of her life, loss of companionship and consortium of her family members, and such other damages as the law allows.

8. Plaintiff, Brian Elsevier, alleges that on the day of this accident and at all times herein material, he was the lawfully wedded husband of the deceased plaintiff, Elizabeth

Elsevier, and that as a result of the injuries suffered by his wife, he has been caused to lose her services and consortium.

9. The plaintiffs aver that as a result of the collision between the vehicle and the guardrail, their automobile was damaged and that they have incurred expense in the repair and/or loss of value of the vehicle, that they have lost the use of said vehicle for a length of time, and that the value of the vehicle has been diminished by this accident.

10. Plaintiffs allege that all of their losses and damages as hereinabove set forth are the direct, proximate and sole result of the negligent acts and/or omissions of the State of Tennessee through its agents, servants and/or employees and the plaintiffs are without fault.

11. The plaintiffs allege that they are entitled to any and all damages appropriate pursuant to Tennessee Code Annotated 9-8-307 and other statutory and common laws of the State of Tennessee.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray as follows:

1. That they be permitted to file this claim for damages.
2. That this cause be set for hearing before the Tennessee Claims

Commission pursuant to T.C.A. 9-8-301 et. seq.

3. That upon a hearing of this cause, the plaintiffs be awarded maximum benefits payable under T.C.A. 9-8-307 and other appropriate statutory and common laws of the State of Tennessee.



Gary L. Adkins
BILL HOTZ & ASSOCIATES
Attorney for Plaintiffs
6004 Walden Drive
Knoxville, TN 37919
865.637.8281

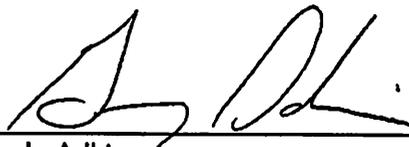
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Complaint has been served upon the Attorney General for the State of Tennessee and upon the Division of Claims Administration by placing a true and exact copy of the said pleading in the United States Mail via Certified Mail, Return Receipt Requested, with sufficient postage thereupon to carry the same to its destination or by personally serving a copy of the Complaint upon same at their offices/headquarters.

This the 13th day of January, 2014.

BILL HOTZ & ASSOCIATES, P.C.

By:



Gary L. Adkins