

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARZENA MULAWKA,)	
)	
Plaintiff,)	Civil Action No. 2:11-cv-01651
)	
v.)	
)	
COMMONWEALTH OF PENNSYLVANIA,)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION, MERCER COUNTY)	
PENNSYLVANIA, TRINITY HIGHWAY)	
PRODUCTS, LLC, TRINITY INDUSTRIES,)	
INC., TEXAS TRANSPORTATION)	
INSTITUTE, TEXAS A&M UNIVERSITY)	
SYSTEM, SUPERIOR AMBULANCE)	
SERVICE, JOHN DOE, FORD MOTOR)	
CORPORATION, and HAWKINSON FORD)	
COMPANY,)	
)	
Defendants.)	

TRINITY HIGHWAY PRODUCTS, LLC’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant Trinity Highway Products, LLC (“Trinity Highway), by its undersigned attorneys, hereby files its Answer to Plaintiff’s Complaint (the “Complaint”) and states as follows:

JURISDICTION

1. The allegations contained in Paragraph 1 of the Complaint are denied as stated. It is admitted that Trinity Industries, Inc. (“Trinity Industries”) is a Delaware corporation and that Trinity Highway is a Delaware limited liability company. However, the remaining allegations contained in Paragraph 1 of the Complaint are conclusions of law to which no response is required. To the extent an additional response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations contained in Paragraph 1 of the Complaint, which allegations are therefore denied.

VENUE

2. The allegations contained in Paragraph 2 of the Complaint are conclusions of law to which no response is required. To the extent an additional response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 of the Complaint, which allegations are therefore denied.

PARTIES

3. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, which allegations are therefore denied.

4. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint, which allegations are therefore denied.

5. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint, which allegations are therefore denied.

6. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, which allegations are therefore denied.

7. The allegations contained in Paragraph 7 of the Complaint are denied as stated. It is admitted that Trinity Industries is one of North America's largest manufacturers of

transportation, construction, and industrial products. However, it is denied that Trinity Industries manufactured, sold, or distributed ET-Plus systems or is a proper party to this litigation.

8. The allegations contained in Paragraph 8 of the Complaint are denied as stated. It is admitted that Trinity Industries' principle place of business is located in the State of Texas. However, it is denied that Trinity Industries is a proper party to this litigation.

9. The allegations contained in Paragraph 9 of the Complaint are denied as stated. It is admitted that Trinity Industries is a Delaware Corporation. However, it is denied that Trinity Industries is a proper party to this litigation.

10. The allegations contained in Paragraph 10 of the Complaint are denied as stated. It is admitted that Trinity Highway manufactures and sells highway guardrail end treatment systems approved by the Federal Highway Administration. It is further admitted that state departments of transportation, or the applicable highway authority, can specify Trinity Highway products as being compliant with the National Cooperative Highway Research Program Report 350, meeting Federal Highway Administration requirements, for installation on the national highway system. However, the remaining allegations contained in Paragraph 10 of the Complaint are denied.

11. The allegations contained in Paragraph 11 of the Complaint are admitted.

12. The allegations contained in Paragraph 12 of the Complaint are denied as stated. It is admitted that Trinity Highway is a Delaware limited liability company. However, the remaining allegations contained in Paragraph 12 of the Complaint are denied.

13. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, which allegations are therefore denied.

14. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, which allegations are therefore denied.

15. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint, which allegations are therefore denied.

16. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint, which allegations are therefore denied.

17. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint, which allegations are therefore denied.

18. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint, which allegations are therefore denied.

19. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint, which allegations are therefore denied.

20. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint, which allegations are therefore denied.

21. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint, which allegations are therefore denied.

22. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint, which allegations are therefore denied.

23. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint, which allegations are therefore denied.

24. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 24 of the Complaint, which allegations are therefore denied.

25. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint, which allegations are therefore denied.

26. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26 of the Complaint, which allegations are therefore denied.

27. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27 of the Complaint, which allegations are therefore denied.

FACTUAL ALLEGATIONS

28. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28 of the Complaint, which allegations are therefore denied.

29. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint, which allegations are therefore denied.

30. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint, which allegations are therefore denied.

31. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of the Complaint, which allegations are therefore denied.

32. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint, which allegations are therefore denied.

33. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint, which allegations are therefore denied.

34. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint, which allegations are therefore denied.

35. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint, which allegations are therefore denied.

36. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint, which allegations are therefore denied.

37. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37 of the Complaint, which allegations are therefore denied.

38. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 38 of the Complaint, which allegations are therefore denied.

39. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 39 of the Complaint, which allegations are therefore denied.

40. The allegations contained in Paragraph 40 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, it is denied that the guardrail end treatment system was defectively designed or manufactured. By way of further response, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 40 of the Complaint, which allegations are therefore denied.

41. The allegations contained in Paragraph 41 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, it is denied that the

guardrail end treatment system was defectively designed or manufactured. By way of further response, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 41 of the Complaint, which allegations are therefore denied.

42. The allegations contained in Paragraph 42 of the Complaint are denied as stated. It is admitted that Texas A&M University designs, tests, and owns the intellectual property comprising the ET-Plus guardrail end treatment systems. It is further admitted that Texas A&M University licenses its roadside device intellectual property to Trinity Highway. It is also admitted that Trinity Highway manufactures and sells highway guardrail end treatment systems approved by the Federal Highway Administration. Finally, it is admitted state departments of transportation, or the applicable highway authority, can specify Trinity Highway products as being compliant with the National Cooperative Highway Research Program Report 350, meeting Federal Highway Administration requirements, for installation on the national highway system. However, it is denied that Trinity Industries is a proper party to this litigation. By way of further response, the remaining allegations contained in Paragraph 42 of the Complaint are conclusions of law to which no response is required. To the extent an additional response is required, the allegations are denied.

43. The allegations contained in Paragraph 43 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

44. The allegations contained in Paragraph 44 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as

to the truth of the remaining allegations contained in Paragraph 44 of the Complaint, which allegations are therefore denied.

45. The allegations contained in Paragraph 45 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 45 of the Complaint, which allegations are therefore denied.

46. The allegations contained in Paragraph 46 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46 of the Complaint, which allegations are therefore denied.

47. The allegations contained in Paragraph 47 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 47 of the Complaint, which allegations are therefore denied.

48. The allegations contained in Paragraph 48 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 48 of the Complaint, which allegations are therefore denied.

49. The allegations contained in Paragraph 49 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 49 of the Complaint, which allegations are therefore denied.

50. After reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 50 of the Complaint, which allegations are therefore denied.

51. The allegations contained in Paragraph 51 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 51 of the Complaint, which allegations are therefore denied.

COUNT ONE
BREACH OF EXPRESS AND IMPLIED WARRANTY
ALL DEFENDANTS EXCEPT SUPERIOR AMBULANCE SERVICE

52. The allegations contained in Paragraph 52 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 51 of the Complaint as if fully set forth at length herein.

53. The allegations contained in Paragraph 53 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

54. The allegations contained in Paragraph 54 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

55. The allegations contained in Paragraph 55 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

56. The allegations contained in Paragraph 56 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

57. The allegations contained in Paragraph 57 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

58. The allegations contained in Paragraph 58 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

59. The allegations contained in Paragraph 59 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

60. The allegations contained in Paragraph 60 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its

costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

COUNT TWO
NEGLIGENCE
ALL DEFENDANTS EXCEPT SUPERIOR AMBULANCE SERVICE

61. The allegations contained in Paragraph 61 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 60 of the Complaint as if fully set forth at length herein.

62. The allegations contained in Paragraph 62 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, it is denied that the guardrail end treatment system was defectively designed or manufactured. By way of further response, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 62 of the Complaint, which allegations are therefore denied.

63. The allegations contained in Paragraph 63 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 63 of the Complaint, which allegations are therefore denied.

64. The allegations contained in Paragraph 64 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

65. The allegations contained in Paragraph 65 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

66. The allegations contained in Paragraph 66 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

67. The allegations contained in Paragraph 67 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

**COUNT THREE
NEGLIGENCE**

**ALL DEFENDANTS EXCEPT TRINITY INDUSTRIES, INC.,
TRINITY HIGHWAY PRODUCTS, LLC, TEXAS TRANSPORTATION
INSTITUTE, TEXAS A&M UNIVERSITY SYSTEM, FORD MOTOR
CORPORATION, AND HAWKINSON FORD COMPANY**

68. The allegations contained in Paragraph 68 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 67 of the Complaint as if fully set forth at length herein.

69-78. The allegations contained in Paragraphs 69 through 78 of the Complaint are directed to Defendants Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, Mercer County, Pennsylvania, and Superior Ambulance Service and not to

Trinity Highway. Accordingly, no response from Trinity Highway is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

COUNT FOUR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
ALL DEFENDANTS EXCEPT TRINITY INDUSTRIES, INC.,
TRINITY HIGHWAY PRODUCTS, LLC, TEXAS TRANSPORTATION
INSTITUTE, TEXAS A&M UNIVERSITY SYSTEM, FORD MOTOR
CORPORATION, AND HAWKINSON FORD COMPANY

79. The allegations contained in Paragraph 79 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 78 of the Complaint as if fully set forth at length herein.

80-84. The allegations contained in Paragraphs 80 through 84 of the Complaint are directed to Defendants Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, Mercer County, Pennsylvania, and Superior Ambulance Service and not to Trinity Highway. Accordingly, no response from Trinity Highway is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

COUNT FIVE
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
ALL DEFENDANTS EXCEPT TRINITY INDUSTRIES, INC.,
TRINITY HIGHWAY PRODUCTS, LLC, TEXAS TRANSPORTATION
INSTITUTE, TEXAS A&M UNIVERSITY SYSTEM, FORD MOTOR
CORPORATION, AND HAWKINSON FORD COMPANY

85. The allegations contained in Paragraph 85 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 84 of the Complaint as if fully set forth at length herein.

86-91. The allegations contained in Paragraphs 86 through 91 of the Complaint are directed to Defendants Commonwealth of Pennsylvania, Pennsylvania Department of Transportation, Mercer County, Pennsylvania, and Superior Ambulance Service and not to Trinity Highway. Accordingly, no response from Trinity Highway is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

COUNT SIX
FAILURE TO WARN
ALL DEFENDANTS EXCEPT SUPERIOR AMBULANCE SERVICE

92. The allegations contained in Paragraph 92 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 91 of the Complaint as if fully set forth at length herein.

93. The allegations contained in Paragraph 93 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

94. The allegations contained in Paragraph 94 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

95. The allegations contained in Paragraph 95 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

96. The allegations contained in Paragraph 96 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

COUNT SEVEN
STRICT LIABILITY
ALL DEFENDANTS EXCEPT SUPERIOR AMBULANCE SERVICE

97. The allegations contained in Paragraph 97 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity Highway incorporates by reference its responses to Paragraphs 1 through 96 of the Complaint as if fully set forth at length herein.

98. The allegations contained in Paragraph 98 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

99. The allegations contained in Paragraph 99 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

100. The allegations contained in Paragraph 100 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied. By way of further response, it is denied that the guardrail end treatment system was defectively designed or manufactured. It is further denied that Trinity Industries manufactured, sold, or distributed ET-Plus systems or is a proper party to this litigation.

101. The allegations contained in Paragraph 101 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 101 of the Complaint, which allegations are therefore denied.

102. The allegations contained in Paragraph 102 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 102 of the Complaint, which allegations are therefore denied.

103. The allegations contained in Paragraph 103 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

104. The allegations contained in Paragraph 104 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

105. The allegations contained in Paragraph 105 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

106. The allegations contained in Paragraph 106 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, after reasonable investigation, Trinity Highway is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 106 of the Complaint, which allegations are therefore denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

**COUNT FIVE [sic]
PUNITIVE DAMAGES
ALL DEFENDANTS EXCEPT COMMONWEALTH OF
PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION, AND MERCER COUNTY, PENNSYLVANIA**

107. The allegations contained in Paragraph 107 of the Complaint constitute an incorporation paragraph to which no response is required. By way of further response, Trinity

Highway incorporates by reference its responses to Paragraphs 1 through 106 of the Complaint as if fully set forth at length herein.

108. The allegations contained in Paragraph 108 of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

72 [sic]. The allegations contained in Paragraph 72 [sic] of the Complaint are conclusions of law to which no response is required. To the extent a response is required, the allegations are denied.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

AFFIRMATIVE DEFENSES

1. The Complaint fails, in whole or in part, to set forth a cause of action upon which relief can be granted.

2. Plaintiff's claims may be barred, in whole or in part, by the applicable statute(s) of limitation and/or repose for such actions.

3. Any injuries suffered or damages incurred by Plaintiff were caused solely by conduct of third persons, entities, or parties for whose conduct Trinity Highway is not responsible.

4. Any injuries suffered or damages incurred by Plaintiff may have been caused solely by the negligence of Plaintiff and/or others over whom Trinity Highway exercised no control, had no opportunity to anticipate or right to control, and with whom Trinity Highway had

no legal relationship by which liability could be attributed to it because of the actions of Plaintiff and/or others, which by comparison was far greater than any conduct alleged as to Trinity Highway.

5. Any injuries suffered or damages incurred by Plaintiff were directly or proximately caused by others in the reckless, careless, and negligent manner in which they installed, maintained, and/or operated the guardrail product referred to in the Complaint.

6. Any injuries suffered or damages incurred by Plaintiff are the direct and proximate result of modifications made to the guardrail product referred to in the Complaint by others prior to the time of the incident.

7. Any injuries suffered or damages incurred by Plaintiff arose out of the negligence, breach of contract, or other wrongful conduct of others.

8. Any injuries suffered or damages incurred by Plaintiff may have been directly or proximately caused by Plaintiff's own contributory negligence. As such, all of Plaintiff's claims are barred or limited, in whole or in part, by the applicable provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. Cons. Stat. Ann. § 7102.

9. Plaintiff's claims are barred, in whole or in part, by the doctrine of intervening and superseding cause.

10. There exists no proximate cause between any of Plaintiff's alleged damages and any act or omission on the part of Trinity Highway.

11. To the extent that the guardrail product referred to in the Complaint was designed, manufactured, and/or distributed by Trinity Highway, the subject product complied with the state of the art at the time it was designed, manufactured, and/or distributed by Trinity Highway. The methods, standards, and techniques utilized by Trinity Highway were in conformity with the

generally recognized state of knowledge in the field at the time of the manufacture of the subject product.

12. To the extent that the guardrail product referred to in the Complaint was designed, manufactured, and/or distributed by Trinity Highway, the subject product may have undergone unforeseeable and substantial changes, alterations, or modifications after leaving the possession, custody, and control of Trinity Highway. Plaintiff's claims are barred, in whole or in part, by the provisions of Pennsylvania law and/or the corresponding laws of any other State or Commonwealth of the United States whose laws might be deemed controlling in this case.

13. To the extent that the guardrail product referred to in the Complaint was designed, manufactured, and/or distributed by Trinity Highway, the subject product may have been subjected to abuse and/or misuse after leaving the possession, custody, and control of Trinity Highway. Plaintiff's claims are barred, in whole or in part, by the provisions of Pennsylvania law and/or the corresponding laws of any other State or Commonwealth of the United States whose laws might be deemed controlling in this case.

14. Any product manufactured, sold, or distributed by Trinity Highway was neither defective nor unreasonably dangerous in that it complied, at all relevant times, with all applicable safety standards, including but not limited to regulations and specifications promulgated by the Federal Highway Administration and the Pennsylvania Department of Transportation.

15. Some or all of Plaintiff's claims are barred by the learned intermediary and/or sophisticated user doctrines. At all relevant times herein, the Pennsylvania Department of Transportation was in the position of a sophisticated purchaser, fully knowledgeable, and informed with respect to the risks and benefits related to the use of the guardrail product referred to in the Complaint.

16. Plaintiff's claims are preempted by Federal law in that Trinity Highway's highway guardrail end treatment systems were researched, tested, developed, manufactured, labeled, marketed, and sold in a manner consistent with the state of the art procedures at the pertinent time and that said highway guardrail systems complied with applicable highway authority, the National Cooperative Highway Research Program Report 350, meeting Federal Highway Administration requirements, for installation on the national highway system.

17. Any causes of action claimed by Plaintiff arising from an intrusion of random, non-Trinity Highway guardrail parts into the passenger cabin of Plaintiff's 2005 Ford Freestyle on January 3, 2010, when the vehicle that Plaintiff was driving impacted guardrail parts assembled by the Pennsylvania Department of Transportation on Interstate 80 in Mercer County, Pennsylvania, that were not approved by the Federal Highway Administration and National Cooperative Highway Research Program Report 350 are preempted by the doctrine of Federal field preemption because there was no Federal Highway Administration and National Cooperative Highway Research Program Report 350 approved Trinity Highway guardrail end treatment system at that location, at that time. The Pennsylvania Department of Transportation may not create liability for Trinity Highway by using a Trinity Highway component part in an unapproved manner as Federal law requires Federal Highway Administration and National Cooperative Highway Research Program Report 350 accepted guardrail end treatment systems to be used on highways funded by Federal funds.

18. Some or all of Plaintiff's claims are barred by the doctrines concerning unavoidably unsafe products, including, but not limited to, the operation of comments i, j, and k to Section 402A of the RESTATEMENT (SECOND) OF TORTS and/or barred by the RESTATEMENT (THIRD) OF TORTS.

19. Plaintiff's claims are barred, in whole or in part, by the applicable provisions of the United States Constitution, the Pennsylvania Constitution, and/or the applicable Constitution of any other State or Commonwealth of the United States whose laws might be deemed controlling in this case. These provisions include, but are not limited to, the First Amendment to the Constitution of the United States and/or Art. I, § 7 of the Constitution of the Commonwealth of Pennsylvania because Trinity Highway's commercial speech regarding the marketing of highway guardrail end treatment systems was neither false nor misleading.

20. Plaintiff's claims against Trinity Highway are barred because Plaintiff knowingly and voluntarily assumed and/or incurred the risk of injury and Plaintiff's claims are barred or should be reduced under the principles of assumption of risk and/or informed consent. Plaintiff's claims are barred, in whole or in part, by the provisions of Pennsylvania law and/or the corresponding laws of any other State or Commonwealth of the United States whose laws might be deemed controlling in this case.

21. Based on the state of scientific, medical, and technological knowledge existing at the time the guardrail product referred to in the Complaint was allegedly designed, developed, manufactured, produced, marketed, assembled, tested, distributed, or sold by Trinity Highway, said product was reasonably safe for its normal and foreseeable use at all relevant times, or in light of existing, reasonably available scientific, medical, and technological knowledge.

22. The Complaint fails, in whole or in part, because the subject accident was unforeseeable and unavoidable.

23. Plaintiff may have failed to join a necessary or indispensable party.

24. Plaintiff is barred by the doctrines of waiver and estoppel in asserting her claims.

25. Plaintiff's claims are barred by the doctrines of payment, release, and accord and satisfaction.

26. Any injuries suffered or damages incurred by Plaintiff may have been the direct and proximate result of the failure to take all reasonable steps to reduce and/or mitigate damages and/or the potential for damages.

27. If Plaintiff has received, is receiving, is entitled to receive, or subsequently receives or becomes entitled to receive any recovery, compensation, or benefits from any source in connection with the injuries alleged in the Complaint, the amount of damages, if any, which may be recoverable herein, should be diminished by the amount of such recovery, compensation, or benefits.

28. The Complaint fails to state a claim for punitive damages upon which relief can be granted.

29. Plaintiff's claim for punitive damages violates, and is therefore barred by, the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States on grounds including the following:

a. It is a violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the plaintiff satisfying a burden of proof which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases;

b. The procedures pursuant to which punitive damages are awarded may result in the award of joint and several judgments against multiple defendants for different alleged acts of wrongdoing, which infringes upon the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution;

c. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against defendants, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

d. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages, which thereby violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

e. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar acts, and thus violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

f. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes upon the Due Process Clause of the Fifth and Fourteenth Amendments and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution;

g. The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution;

h. The award of punitive damages to Plaintiff in this action would constitute a deprivation of property without due process of law; and

i. The procedures pursuant to which punitive damages are awarded permit the imposition of an excessive fine and penalty.

30. With respect to Plaintiff's claim for punitive or exemplary damages, Trinity Highway specifically incorporates by reference all standards of limitations regarding the

determination and enforceability of punitive damages awards, including, but not limited to, those standards of limitation which arose in BMW of N. Am. v. Gore, 517 U.S. 559 (1996), Cooper Indus. v. Leatherman Tool Group, 532 U.S. 424 (2001), and State Farm Mut. Auto. Ins. Co. v. Cambell, 538 U.S. 408 (2003).

31. While Trinity Highway denies any liability to Plaintiff whatsoever, in the event that the allegations of the Complaint are established by competent evidence at trial, then Trinity Highway avers that other Defendants are solely liable, are jointly and severally liable, or are liable over Trinity Highway to Plaintiff for any sums adjudged against Trinity Highway, based upon negligence, strict liability, or otherwise.

32. Trinity Highway alleges that Plaintiff's damages are subject to being apportioned by and between parties, non-parties, pre-existing conditions, idiosyncratic reactions, and acts of nature.

33. If Plaintiff has agreed not to sue, or has compromised or otherwise reached some arrangement with any other parties, then such is a complete bar to this action as satisfaction thereof. In the alternative, should the Court find this not to be a bar, the jury should be advised of Plaintiff's agreements, and any monetary amounts involved, so that Trinity Highway can be credited with, or receive an offset for, said amounts Plaintiff has already received, so as to prevent a double recovery by Plaintiff.

34. If it is determined that Plaintiff was exposed to any of Trinity Highway's products or components sold to or used on behalf of the United States, the Commonwealth of Pennsylvania, or any other State or Commonwealth of the United States, then Trinity Highway is entitled to any sovereign or governmental immunity available to the United States, the Commonwealth of Pennsylvania, or such other State or Commonwealth.

35. Trinity Highway asserts all appropriate defenses which may be asserted; further denies all allegations not specifically responded to; further reserves the right to assert any additional affirmative defenses which may arise in the course of discovery for the trial of this matter, to the extent such an amendment is permitted under the Federal Rules of Civil Procedure; and requests a trial by jury.

WHEREFORE, Defendant Trinity Highway Products, LLC respectfully requests that judgment be entered in its favor dismissing, with prejudice, the Complaint and awarding all its costs and expenses of suit, including attorneys' fees, together with such other and further relief as the Court deems appropriate.

A JURY TRIAL IS DEMANDED.

Respectf

ully submitted,

/s/ Thomas J. Sweeney, Jr.
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Thomas P. Kemp, Jr., Esq.
Pa. ID No. 312432
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*Attorneys for Defendant Trinity Highway
Products, LLC*

Dated: April 23, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 23, 2012, a true and correct copy of the foregoing Answer to Plaintiff's Complaint was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record. In addition, the undersigned further certifies that on April 24, 2012, a true and correct copy of the foregoing was also served by United States mail, first class, postage prepaid, addressed as follows:

Marzena Mulawka
500 Riverside Drive
Unit 268
New York, NY 10027
Pro se Plaintiff

Mercer County, Pennsylvania
103 Mercer County Courthouse
Mercer, PA 16137
Defendant

Commonwealth of Pennsylvania
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120
Defendant

Superior Ambulance Service, Inc.
921 East Main Street
P.O. Box 247
Grove City, PA 16127
Defendant

Pennsylvania Department of Transportation
1101 South Front Street
Harrisburg, PA 17104
Defendant

Hawkinson Ford Company
6100 W. 95th St.
Oak Lawn, IL 60453
Defendant

/s/ Thomas J. Sweeney, Jr.

*Attorney for Defendant Trinity Highway
Products, LLC*

Fee P.D. / Summons Issued

15A/B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

-----X
MARZENA MULAWKA,

Case#:

11-1651

Plaintiff,

COMPLAINT

-v-

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION, MERCER COUNTY
PENNSYLVANIA, TRINITY HIGHWAY PRODUCTS, L.L.C.,
TRINITY INDUSTRIES, INC TEXAS TRANSPORTATION
INSTITUTE, TEXAS A&M UNIVERSITY SYSTEM,
SUPERIOR AMBULANCE SERVICE, JOHN DOE, FORD
MOTOR CORPORATION and HAWKINSON FORD COMPANY,

Defendants.
-----X

CIVIL ACTION COMPLAINT
MOTOR VEHICLE ACCIDENT

JURISDICTION

1. Plaintiffs bring this action under Diversity of Citizenship, 28 U.S.C.1332. Plaintiff resides in the State of New York. The defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, MERCER COUNTY PENNSYLVANIA, SUPERIOR AMBULANCE SERVICE, and JOHN DOE (place of employment) are all have their principal place of businesses in the State of Pennsylvania. Plaintiff is a citizen of the State of New York and Defendants are citizens and business entities of the State of Pennsylvania,

State of Delaware, State of Texas and State of Illinois and there exists complete diversity of citizenship. The defendants TRINITY INDUSTRIES, INC., TRINITY HIGHWAY PRODUCTS, L.L.C., FORD MOTOR CORPORATION are Delaware Corporations. TEXAS TRANSPORTATION INSTITUTE and TEXAS A & M UNIVERSITY SYSTEM's principle place of businesses are all located in the State of Texas. HAWKINSON FORD COMPANY's principal place of business is located in the State of Illinois.

VENUE

2. Venue is proper in that the defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, MERCER COUNTY PENNSYLVANIA, PENNSYLVANIA STATE POLICE and SUPERIOR AMBULANCE SERVICE all have their principal place of businesses within the State of Pennsylvania. Upon information and belief JOHN DOE resides in the State of Pennsylvania. Moreover, a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated in the County of Mercer, State of Pennsylvania, 28 U.S.C. § 1391.

PARTIES

3. Plaintiff MARZENA MULAWKA is an individual, who resides in the State of New York.

4. The defendant COMMONWEALTH OF PENNSYLVANIA is a State Government that administers the State of Pennsylvania.
5. The PENNSYLVANIA DEPARTMENT OF TRANSPORTATION is a governmental agency (PennDOT) that oversees transportation issues in the Commonwealth of Pennsylvania.
6. The defendant MERCER COUNTY PENNSYLVANIA is a governmental body that administers the County of Mercer in the State of Pennsylvania.
7. The defendant TRINITY INDUSTRIES, INC. is one of North America's largest manufacturers of transportation, construction and industrial products including but not limited guide rail end treatments.
8. The defendant TRINITY INDUSTRIES, INC's principal place of business is located in the State of Texas.
9. The defendant TRINITY INDUSTRIES, INC is a Delaware Corporation.
10. TRINITY HIGHWAY PRODUCTS, LLC. is one of North America's largest manufacturers of transportation, construction and industrial products including but not limited guide rail end treatments.
11. TRINITY HIGHWAY PRODUCTS, LLC principal place of business is located in the State of Texas.
12. TRINITY HIGHWAY PRODUCTS, LLC is a Delaware Corporation.
13. The defendant TEXAS TRANSPORTATION INSTITUTE (TTI), is a member of The Texas A&M University System, seeks solutions to the problems and challenges facing all modes of transportation.

14. The defendant TEXAS TRANSPORTATION INSTITUTE's principal place of business is located in the State of Texas.
15. The defendant TEXAS TRANSPORTATION INSTITUTE is a Texas corporation.
16. The defendant TEXAS A & M UNIVERSITY SYSTEM is a public institution of higher education located in the State of Texas.
17. The defendant TEXAS A&M UNIVERSITY SYSTEM's principal place of business is located in the State of Texas.
18. The defendant TEXAS A&M UNIVERSITY SYSTEM is a Texas Corporation.
19. The defendant SUPERIOR AMBULANCE SERVICE INC., is corporation authorized to the business in the State of Pennsylvania.
20. The defendant SUPERIOR AMBULANCE SERVICE's INC., principal place of business is located in Mercer County, Pennsylvania.
21. The defendant SUPERIOR AMBULANCE SERVICE's INC is a Pennsylvania Corporation.
22. JOHN DOE is an individual, who was working as an emergency medical technician for defendants MERCER COUNTY PENNSYLVANIA and/or SUPERIOR AMBULANCE SERVICE INC., at the time of Plaintiff's accident.
23. Upon information and belief JOHN DOE resides in the State of Pennsylvania.

24. The defendant FORD MOTOR COMPANY is a business corporation formed pursuant to the rules of the State Of Delaware headquarters located in Dearborn, Michigan.
25. The defendant FORD MOTOR COMPANY is a Delaware Corporation.
26. The defendant HAWKINSON MOTOR COMPANY is a duly existing corporation authorized to the business in the State of Illinois.
27. The defendant HAWKINSON MOTOR COMPANY is an Illinois Corporation.

FACTS

28. That at all times herein mentioned, Plaintiff MARZENA MULAWKA operated a 2005 Ford Freestyle vehicle bearing Illinois Registration License Plate Number 7632565. (Vin#: 1FMZK01155GA25205)
29. That all times hereinafter mentioned said 2005 Ford Freestyle (Vin#: 1FMZK01155GA25205) manufactured, designed and sold by FORD MOTOR CORPORATION.
30. That all times hereinafter mentioned said 2005 Ford Freestyle (Vin#: 1FMZK01155GA25205) sold/ marketed by HAWKINSON MOTOR COMPANY
31. That at all times herein mentioned, Plaintiff MARZENA MULAWKA owned, maintained and controlled the aforesaid 2005 Ford Freestyle motor vehicle.
32. That at all times herein mentioned, Plaintiff MARZENA MULAWKA operated the aforesaid 2005 Ford Freestyle motor vehicle on January 3, 2010.

33. That all times herein mentioned, or about January 3, 2010 Plaintiff was involved in a motor vehicle accident.
34. That at all times hereinafter mentioned I-80, County of Mercer, Commonwealth of Pennsylvania was and still is an interstate highway, over, along and upon which motor vehicles did and do travel.
35. That at all times hereinafter mentioned I-80, County of Mercer, Commonwealth of Pennsylvania was and still controlled, maintained by the defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA.
36. That at all times herein mentioned, the approximate coordinates of the accident location was and still is (41.185889,-80.342846)
37. That on or about January 3, 2010, Plaintiff was traveling in the left lane at the aforementioned location on eastbound I-80.
38. That on or about January 3, 2010, Plaintiff's aforesaid 2005 Ford Freestyle motor vehicle was hit in the rear by an unidentified tractor-trailer, and was pushed into the rear-end of another unidentified tractor-trailer travelling in front of Plaintiff's vehicle. After the second impact, (First to the rear of the Plaintiff's vehicle, then to the front of the Plaintiff's vehicle) Plaintiff's driver's side door came into contact with the terminal end of a defectively designed guardrail at the above mentioned location. The end of the guardrail penetrated the driver's side door and severed Plaintiff's right leg as well as causing numerous other injuries to the Plaintiff.

39. That on or about January 3, 2010, said 2005 Ford Freestyle's defective airbags did not deploy despite a heavy frontal impact causing Plaintiff to sustain very serious physical injuries.

40. That at all times herein mentioned, the end of the guardrail was defectively designed in that it acted like a spear and penetrated the driver's door causing Plaintiff's right leg to be severed at the accident scene.

41. The injuries and damages complained of herein were a result of the acts of Defendants.

42. Defendants, Trinity Industries, Inc., Trinity Highway Products, L.L.C. Texas Transportation Institute, Texas A&M University System, breached the following duties under the theories of products liability, and committed the following acts of negligence which violated the customary and usual procedures generally recognized and accepted in Defendants' industry and which violated industry standards:

A. Defendants, Trinity Industries, Inc., Trinity Highway Products, L.L.C. Texas Transportation Institute, and Texas A&M University System breached their implied warranty of fitness and their implied warranty of merchantability.

B. The product referred to below was defective in its condition, design, and/or manufacture when it was placed in the normal channels of commerce as follows:

(1) The product was not designed to provide impact crash protection concerning motor vehicle doors when it was reasonably foreseeable that it

would be used for such purpose and that motor vehicles' doors would come into contact with the end of guide rails.

(2) The product was not encapsulated with materials that would prevent sharp edged materials from penetrating car doors during a reasonably foreseeable crash.

(3) The product was not designed with malleable materials which would not under crash conditions, develop sharp edges that could penetrate car doors in a reasonably foreseeable crash.

(4) Alternate designs were both technologically and economically feasible to prevent an attenuating guide rail end terminal from developing sharp edges that could penetrate car doors.

(5) The product did not contain adequate warnings and no adequate warnings were communicated otherwise that the product was not rated for motor vehicle door impact and should not be used where it was foreseeable that motor vehicles might travel.

(6) As a result of such above defects the sharp end of the guide rail penetrated Plaintiff's driver's side door and severed Plaintiff's right leg as well as causing numerous injuries to the Plaintiff.

C. The product was negligently designed as stated above.

E. There was inadequate testing and inspection of the product prior to its release.

F. There were no adequate warnings or instructions placed on the product or that accompanied the product, which were communicated to the user as to the proper use of such product or dangers associated with the use of such product.

G. Defendants failed to exercise their post-sale duty to warn of such dangers or to modify their product to eliminate such hazards.

H. Defendants violated generally recognized and accepted industry standards in the design and/or manufacture of the product.

I. Said Defendants breached their express warranties in that such product was reported in advertising, literature, and manuals as being safe when It was not.

J. The description of the product is as follows: ET-2000/ET-2000 PLUS/SRT 350 Guide Rail End Treatment.

K. ET-2000/ET-2000 PLUS/ SRT-350 are guide rail end treatments that are manufactured, designed and sold by the Trinity Industries, Inc., Trinity Highway Products, L.L.C.

L. ET-2000/ET-2000 PLUS/SRT-350 are a guide rail end treatments that were manufactured, designed and sold by the defendants Texas Transportation Institute, Texas A&M University System.

43. For the above reasons, said product was unreasonably dangerous beyond the contemplation of the average user.

44. That at all times hereinafter mentioned, the above referenced roadway was defective and created an unreasonable risk of harm or injury to the Plaintiff.

45. That at all times hereinafter mentioned, the defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF

TRANSPORTATION and MERCER COUNTY PENNSYLVANIA had actual or constructive notice and did not fix the problem within a reasonable length of time concerning the roadway. More specifically, the defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA caused and/or contributed the Plaintiff's injuries for the following reasons:

A) in permitting a dangerous condition on its highways/roadways by failing to properly maintain the guiderails on I-80 despite undertaking numerous inspections of the guiderail before January 3, 2010.

B) in failing to properly inspect the guiderail, take notice of its dangerous condition and exercise reasonable care with regard to the dangerous condition which existed at the time of the accident;

C) in failing to warn Plaintiff and other motorists of the foregoing described hazardous condition;

D) in failing to install the proper guiderail

E) in failing to repair/replace the guiderail along the aforementioned portion of the roadway, including inter alia, replacement of the actual guiderail and/or replacement and securing of inadequate/missing bolts;

(F) in failing to properly install and erect the guiderail described above;

(G) in failing to properly design, construct and maintain the highway/roadway upon which the Plaintiff was injured in respect to the installation and construction of the guiderail affecting the roadway;

(H) in failing to properly comply with accepted industry relating to the design, construction, maintenance, repair and inspection of the guiderail and the highway/roadway involved in the occurrence in which the Plaintiff was injured.

(I) in failing to comply with its own rules and regulations relating to the installation, erection, construction, inspection and design of the guiderail and the highway/roadway which resulted in the injury to the Plaintiff as set forth above;

(J) In failing to exercise reasonable care and caution as was required under the circumstances in relation to the erection, construction, inspection, maintenance and repair of the guiderail and the roadway which failed resulting in injuries to the Plaintiff as set forth above.

(K) That at all time hereinafter mentioned the defective roadway, unsafe conditions and the defectively designed guiderail were the legal cause of the Plaintiff's injuries.

46. The defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA had the actual notice of the accident in that a police report was issued as a result of the accident on the date of the accident.

47. The defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA had the actual notice of the accident in that a 911 call was placed immediately after the accident.

48. The defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA had the actual notice of the accident in that they replaced the damaged guiderail and sent a bill to the Plaintiff for the cost of the replaced Guide Rail within the first six months of the accident.
49. Plaintiff has a reasonable excuse in not filing a notice of claim against the State defendants in that her right leg was amputated and she had to undergo (8) eight surgeries as a result of the accident, which necessitated a very long treatment as an in-patient and outpatient at various hospitals.
50. That on or about January 3, 2011, two passerby placed a phone call to 9-1-1 shortly after the accident. Despite the phone call, it took one and a half hours for an ambulance to arrive at the accident scene aggravating and exacerbating the injuries that the Plaintiff sustained. Plaintiff did not lose her consciousness from the time the accident occurred up until the time she was placed in the ambulance. More specifically, approximately 45 (forty-five) minutes after the accident, JOHN DOE, an Emergency Medical Technician arrived at the accident scene, approached Plaintiff and realized that Plaintiff was missing a leg and was bleeding profusely. Plaintiff requested an ambulance and the emergency medical technician advised Plaintiff that many accidents occurred on the day of the accident and that he needed to determine the most qualified injury, so that he could dispatch an ambulance. Plaintiff, in shock, advised the emergency medical technician that she lost a leg and that she was about to die. The emergency medical technician then advised Plaintiff that he was "Sorry"

and that there was no guarantee for an ambulance since he needed to determine the seriousness of the injuries of the other individuals, who were involved in accidents at other locations on I-80. Over Plaintiff's objections, without conducting any medical treatment, including but not limited to emergency medical treatment the emergency medical technician left the scene. An ambulance arrived at the accident scene approximately 45 (forty five) minutes after the emergency medical technician left the accident scene and approximately one and a half hours after the accident.

51. That at all times hereinafter mentioned, the defendants FORD MOTOR CORPORATION and HAWKINSON FORD COMPANY and had actual or constructive notice of the defective airbag and did not fix the problem. More specifically, the defendants FORD MOTOR CORPORATION and HAWKINSON FORD COMPANY caused and/or contributed the Plaintiff's injuries for the following reasons:

A) in permitting a faulty airbag and/or faulty air bag parts to be installed in the said 2005 Ford Freestyle.

B) in failing to properly inspect the airbag, take notice of its dangerous condition and exercise reasonable care with regard to the dangerous condition which existed at the time of the accident;

C) in failing to warn Plaintiff and other motorists of the foregoing described hazardous condition;

D) in failing to properly install the airbag;

E) in failing to install the proper airbag;

F) in failing to properly design the airbag;

G) in failing to properly manufacture the airbag.

H) in failing to properly comply with accepted industry relating to the design, construction, maintenance, repair and inspection of the airbag.

(I) In failing to exercise reasonable care and caution as was required under the circumstances in relation to the erection, construction, inspection, maintenance and repair of the airbag, which failed resulting in injuries to the Plaintiff as set forth above.

(J) That at all time hereinafter mentioned the defective airbag were the legal cause of the Plaintiff's injuries.

**AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH OF
EXPRESS AND IMPLIED WARRANTY AGAINST THE ALL
DEFENDANTS EXCEPT SUPERIOR AMBULANCE SERVICE AND
JOHN DOE**

52. The plaintiff repeats, reiterates and restates all the above paragraphs which are hereby included herein as if set forth more fully at length.

53. That the Defendants expressly and impliedly warranted, to all persons whom they could reasonable foresee would be injured by use of this product, that said guiderail/guiderail end treatment and the highway/roadway was fit for the purpose for which it was intended.

54. That the defendants expressly and impliedly warranted that said guiderail/guiderail end treatment and the highway/roadway and airbag were safe in every respect; that it had been manufactured, produced, tested, inspected and distributed in a good, safe and proper condition, and that it was safe for use with all the proper and necessary warnings and instructions.
55. That the defendants expressly and impliedly warranted that said the guiderail/guiderail end treatment and the highway/roadway were of merchantable quality and was safe for use.
56. That the defendants warranted that the above said guiderail/guiderail end treatment, and the roadway/highway and the airbag were reasonable safe for its intended purpose.
57. That defendants breached the warranties made to the plaintiff.
58. That the representations and warranties made were false, misleading and inaccurate in that the products when put to the test of actual performance, was and proved to be unfit, unsound, unsuitable, defective and unsafe for the purpose for which it was intended.
59. That as a result of defendants' breach of its warranties, express and/or implied, plaintiff, MARZENA MULA WKA, suffered severe, serious and permanent injuries.
60. That by reason of the aforesaid breach, plaintiff, MARZENA MULA WKA, suffered severe injury, all to his great damage in an amount which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A SECOND CAUSE OF ACTION FOR NEGLIGENCE
AGAINST ALL DEFENDANTS EXCEPT SUPERIOR AMBULANCE
SERVICE AND JOHN DOE**

61. The plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.
62. That on January 3, 2010, the Plaintiff, MARZENA MULAWKA, was operating a 2006 Ford Freestyle in the manner for which it was intended when, the 2006 Ford Freestyle's drivers' door came into contact with the unsafe, defective guardrail/guardrail end treatment. As a direct and proximate result of the Defendants' negligence Plaintiff's right leg was severed.
63. That on January 3, 2010, the Plaintiff, MARZENA MULAWKA, was operating a 2006 Ford Freestyle in the manner for which it was intended when, said vehicle was involved in an accident that involved a frontal impact and air bags did not deploy causing Plaintiff to sustain severe injuries.
64. That said guiderail/guiderail end treatment, and the highway/roadway and the airbag contained a hidden, latent and complex defect which was not discoverable by the Plaintiff, MARZENA MULAWKA.
65. That the aforesaid injuries sustained by the plaintiff, MARZENA MULAWKA, were caused by the negligence, carelessness and recklessness of the defendants, their agents, servants and/or employees in the production, preparation, design, testing, inspection, care of, research of, distribution, and sale of the aforesaid Guiderail/guiderail end treatment and the highway/roadway and the defective airba ; in failing to ascertain that said Guiderail/guiderail end treatment and the highway/roadway and the airbag

were unfit for use; in failing to inspect, timely inspect and/or properly inspect said product; in failing to adapt and use the latest technology and/or safety features available for said Guiderail/guiderail end treatment and the highway/roadway and the airbag ; in failing to warn plaintiff, MARZENA MULAWKA of the dangers in using said product; in failing to test and/or properly test said product to ascertain its fitness for use; in failing to note and adhere to industry standards in the use and manufacture and warning; and otherwise being negligent under the circumstances.

66. That the Defendants had notice of the defective condition and failed to utilize reasonable care to remedy the same and/or apply technology available to address the same.
67. That by reason of the aforesaid, plaintiff, MARZENA MULAWKA, suffered severe injury, all to his great damage in an amount which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A THIRD CAUSE OF ACTION FOR NEGLIGENCE
AGAINST ALL DEFENDANTS EXCEPT TRINITY INDUSTRIES,
INC., TRINITY HIGHWAY PRODUCTS, L.L.C. TEXAS
TRANSPORTATION INSTITUTE and TEXAS A & M UNIVERSITY
SYSTEM, FORD MOTOR CORPORATION AND HAWKINSON
FORD COMPANY**

68. The plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.
69. The defendants negligently failed to comply with their own standards for responding to and initiating emergency vehicle transportation services and failed to timely dispatch its ambulance upon Plaintiffs' request.

70. The defendants failed to respond to repeated requests for assistance after initiating the original dispatch;
71. The defendants failed to provide timely dispatch of ambulance or emergency vehicle services when repeatedly requested to do so;
72. The defendant SUPERIOR AMBULANCE SERVICE failed to timely respond to the accident scene and render proper emergency medical care for the Plaintiff.
73. The defendants failed to timely re-initiate requests for dispatch of ambulance or emergency vehicle services when repeatedly requested to do so;
74. The defendants failed to properly train/supervise medical personnel, who responded to the accident scene.
75. The defendants failed to render Emergency Medical Treatment for the Plaintiff.
76. The defendants failed to render proper Emergency Medical Treatment for the Plaintiff
77. Each of the above allegations of negligence involves actions or inactions while having control of the dispatch and routing of emergency vehicles within its jurisdiction as contemplated by 42 Pa.C.S.A. § 8542(b) and 42 Pa. Cons. Stat. § 8522 and as such Defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA are not immune from liability pursuant to the Pennsylvania Political Subdivision Tort Claims Act and the Pennsylvania Constitution.

78. As a result of the defendants' negligence, Plaintiff suffered severe emotional and physical injuries and will continue to suffer.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR NEGLIGENT
INFLECTION OF EMOTIONAL DISTRESS AGAINST ALL
DEFENDANTS EXCEPT TRINITY INDUSTRIES, INC., TRINITY
HIGHWAY PRODUCTS, L.L.C. TEXAS TRANSPORTATION
INSTITUTE and TEXAS A & M UNIVERSITY SYSTEM, FORD
MOTOR CORPORATION and HAWKINSON FORD COMPANY**

79. The plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.

80. The Restatement (Second) Torts section 436 partially provides:

(1) If the actor's conduct is negligent as violating a duty of care designed to protect another from a fright or other emotional disturbance which the actor should recognize as involving an unreasonable risk of bodily harm, the fact that the harm results solely through the internal operation of the fright or other emotional disturbance does not protect the actor from liability.

(2) If the actor's conduct is negligent as creating an unreasonable risk of causing bodily harm to another otherwise than by subjecting him to fright, shock, or other similar and immediate emotional disturbance, the fact that such harm results solely from the internal operation of fright or other emotional disturbance does not protect the actor from liability.

81. The defendants' acts violated the above section.

82. The defendants act was outrageous.

83. Each of the above allegations of negligence involves actions or inactions while having control of the dispatch and routing of emergency vehicles within its jurisdiction as contemplated by 42 Pa.C.S.A. § 8542(b) and 42 Pa. Cons. Stat. § 8522 and as such Defendants COMMONWEALTH OF

PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION and MERCER COUNTY PENNSYLVANIA are not immune from liability pursuant to the Pennsylvania Political Subdivision Tort Claims Act and the Pennsylvania Constitution.

84. As a result of the defendants' conduct, Plaintiff suffered severe emotional and physical injuries.

AS AND FOR A FIFTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST ALL DEFENDANTS EXCEPT TRINITY INDUSTRIES, INC., TRINITY HIGHWAY PRODUCTS, L.L.C. TEXAS TRANSPORTATION INSTITUTE, TEXAS A & M UNIVERSITY SYSTEM and FORD MOTOR CORPORATION and HAWKINSON FORD COMPANY

85. The plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.
86. Pennsylvania courts recognize the tort of intentional infliction of emotional distress and have adopted section 46 of the Restatement (Second) of Torts. That section provides in part:
- (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.
87. The defendants violated Section 46 of the Restatement (Torts)
88. The defendants conduct was extreme and outrageous.
89. The defendants conduct was intentional and/or reckless.

90. The defendants conduct was so outrageous that it went beyond the all possible boundaries of decency.
91. As a result of the defendants' outrageous conduct, Plaintiff suffered and will continue to suffer severe emotional and physical injuries.

**AS AND FOR A SIXTH CAUSE OF ACTION FOR FAILURE TO
WARN AGAINST ALL DEFENDANTS EXCEPT SUPERIOR
AMBULANCE SERVICE AND JOHN DOE**

92. The plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.
93. Defendants failed to issue the proper warning and/or instructions for the aforesaid guiderail/guiderail end treatment and the highway/roadway and the airbag.
94. Defendants failed to provide instructions, and/or proper instructions to distributors and/or purchasers and more specifically the Plaintiff herein, regarding the subject guiderail/guiderail end treatment and the highway/roadway and the airbag.
95. Defendants failed to give plaintiff, MARZENA MULAWKA, an opportunity to avoid the occurrence herein.
96. That by reason of the aforesaid breach, plaintiff, MARZENA MULAWKA, suffered severe injury, all to his great damage in an amount which exceeds the jurisdictional limits of all lower Courts.

**AS AND FOR A SEVENTH CAUSE OF ACTION FOR STRICT
PRODUCTS LIABILITY/PRODUCTS LIABILITY AGAINST ALL**

**DEFENDANTS EXCEPT SUPERIOR AMBULANCE SERVICE AND
JOHN DOE**

97. The plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.
98. That the said products were dangerous and defective and that said defects were a substantial factor in causing the injury to plaintiff MARZENA MULAWKA.
99. That Defendants assumed a strict liability to all persons to whom they could reasonably foresee would be injured by said dangerous condition of said guiderail/guiderail end treatment and the highway/roadway which and the airbag were not fit for the purpose intended.
100. That Defendants, TEXAS TRANSPORTATION INSTITUTE and TEXAS A & M UNIVERSITY SYSTEM TRINITY INDUSTRIES, INC., and TRINITY HIGHWAY PRODUCTS, L.L.C. defectively designed, manufactured the above said guiderail/guiderail end treatment.
101. That Defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, MERCER COUNTY PENNSYLVANIA defectively designed the abovementioned highway/roadway.
102. The defendant FORD MOTOR CORPORATION defectively designed the abovementioned airbag.

103. That by reason of the foregoing, the Defendants, their agents, servants, licensees, and/or employees are liable to the plaintiff, MARZENA MULAWKA, for strict liability and tort and/or strict products liability.
104. That at all times herein, the Defendants were wanton, reckless and their acts constitute gross negligence.
105. That by reason of the aforesaid breach, plaintiff, MARZENA MULAWKA, suffered severe injury, all to his great damage in an amount which exceeds the jurisdictional limits of all lower Courts.
106. The defendants COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, MERCER COUNTY PENNSYLVANIA are not immune from liability pursuant to 42 Pa.C.S.A. § 8542(b) and 42 Pa. Cons. Stat. § 8522.

**AS AND FOR A FIFTH CAUSE OF ACTION FOR PUNITIVE
DAMAGES AGAINST ALL DEFENDANTS EXCEPT
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION and MERCER COUNTY
PENNSYLVANIA.**

107. The Plaintiffs repeats, reiterates and restates all the above paragraphs which are included herein as if set forth more fully at length.
108. That at all times herein, defendants was wanton, reckless and constituted gross negligence.
72. That by reason of the aforesaid breach, plaintiff seeks an amount which exceeds the jurisdictional limits of all lower Courts.

WHEREFORE, Plaintiffs demand judgment against the Defendants individually, jointly and severally in an amount to be determined at the time of trial in excess of the jurisdiction of all lower courts, together with punitive damages and the costs and disbursements of this action and such other, further and different relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by a jury on their complaint in the above-entitled action.

Dated: December 21, 2011


MARZENA MULA WKA

500 RIVERSIDE DRIVE
UNIT: 268
NEW YORK, NY 10027
tel: (708) 227-0175

VERIFICATION

I, Marzena Mulawka hereby verify that the information contained in Plaintiff's summons and complaint is true and correct to the best of my knowledge and belief. These statements are being made subject to the penalties relating to unsworn falsification to authorities, as contained in 18 Pa.C.S. Section 4904.


MARZENA MULA WKA

Dated: December 21, 2011