

CAUSE NO. 130812

2013 OCT 15 AM 10:07

GERARDO MUNOZ & ROSA MUNOZ,  
Husband and wife, in their individual  
Capacity and as the sole heirs of their son  
Gerardo Dejesus Munoz  
Plaintiffs

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IN THE DISTRICT COURT

v.

HARRISON COUNTY, TEXAS

TRINITY INDUSTRIES, INC.; and  
TRINITY HIGHWAY PRODUCTS, LLC  
Defendants

71<sup>st</sup> JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, Gerardo Munoz and Rosa Munoz, Plaintiffs, and files this their Original Petition against Trinity Industries, Inc., and Trinity Highway Products, LLC, and for causes of action would respectfully show as follows:

**1.0 Discovery Plan**

1.1 Pursuant to TRCP 190.1, Plaintiff respectfully requests that discovery in this case be conducted under Level 3 by further order of this Court, as set forth in TRCP 190.4.

**2.0 Parties**

2.1 Plaintiffs are individuals residing in Waskom, Texas. Furthermore, pursuant to the Texas laws of intestacy, they are the sole heirs of their deceased son, Gerardo Dejesus Munoz. No estate administration was necessary after the death of their son.

2.2 Defendant Trinity Industries, Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business in Dallas, Texas. Trinity Industries, Inc. may be served with process by serving its registered agent for service of process: CT Corp System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

2.3 Defendant Trinity Highway Products, LLC, is a limited liability company organized under the laws of the state of Delaware with its principal place of business in Dallas, Texas. Trinity Highway Products, LLC may be served with process by serving its registered agent for service of process: CT Corp. System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

### **3.0 Jurisdiction and Venue**

3.1 This Court has jurisdiction over this matter for the reason that the amount in controversy exceeds the jurisdictional minimum of this court, exclusive of costs and interest, and for the reason that one or more Defendants are residents of the State of Texas, maintain their principal place of business in Texas and/or are doing business in the State of Texas.

3.2 Venue is proper in Harrison County under Texas Civil Practice and Remedies Code §15.002(a)(1) because the automobile accident in question giving rise to Plaintiffs' claim occurred in Harrison County.

### **4.0 The Occurrence**

4.1 This case arises out of an accident that occurred in the early morning hours of October 29, 2011 on US Highway 80 near Waskom, Texas. Plaintiffs' son, Gerardo Dejesus Munoz, was driving eastbound on US Highway 80 approximately two miles west of Waskom, Texas. Based upon the DPS crash investigation, it appears Mr. Munoz fell asleep at the wheel and veered across the westbound lane prior to striking a section of guardrail and impact head located at the Big Sisk Creek bridge crossing.

4.2 At the time of the accident, the guardrail and impact head in question was defective and unreasonably dangerous. As a result of this condition, instead of performing as intended, the guardrail locked up within the impact head and proceeded to penetrate the vehicle

through the center grill area. This penetration caused the vehicle to flip end over end, then going airborne to cross a thirty-foot concrete drain. The vehicle came to rest facing southwest. Mr. Munoz was ejected near the vehicle resting place.

4.3 As a result of the incident, Plaintiffs' son lost his life at the age of twenty-one.

4.4 The "impact head" system was designed, manufactured and marketed by Defendant Trinity Industries and/or Defendant Trinity Highway Products, LLC (collectively referred to herein as Defendant Trinity). As intended, the "impact head" is designed to extrude the guardrail through the head so that the guardrail flattens out into a ribbon, which allows the energy from the impact to be absorbed and prevent the guardrail from penetrating the vehicle upon impact.

4.5 Due to design changes made by Defendant Trinity in approximately 2005, however, the "impact head" has on numerous occasions failed to perform as intended. As a result, instead of flattening out into a ribbon upon impact, the guardrail acts like a spear in penetrating the vehicle upon impact. This creates an unreasonable risk of serious injury to occupants of vehicles that impact the guardrail.

## **5.0 Conditions Precedent**

5.1 All conditions precedent have been performed or have occurred. TEX.R.CIV.P. 54.

## **6.0 Cause of Action – Defendant Trinity, Wrongful Death & Survival, CPRC § 71**

6.1 Defendant Trinity had a duty to exercise ordinary care in the design, testing, marketing and distribution of the impact head system to ensure that it was not unreasonably dangerous for its intended and foreseeable use on the highways of the State of Texas. Defendant Trinity knew, or in the exercise of ordinary care should have known, that the impact head system as re-designed in approximately 2005 was defective and unreasonably dangerous to members of

the driving public, including Plaintiff. Defendant Trinity breached its duty of ordinary care by placing the impact head system into the stream of commerce in a defective and unreasonably dangerous condition. This negligence on the part of Defendant Trinity was a proximate cause and cause-in-fact of the injuries sustained by Plaintiffs when their son's vehicle struck Defendant Trinity's product on October 29, 2011.

6.2 Defendant Trinity is the manufacturer of the guardrail and impact head system installed at the location in question. It was foreseeable to Defendant Trinity that accidents would occur involving impact between vehicles and guardrails placed along the highways of the State of Texas. Defendant Trinity defectively designed, manufactured, assembled, marketed and/or distributed the guardrail and impact head system when it modified the product in approximately 2005 in a manner that prevents the impact head system from operating as intended. As such, Defendant Trinity is liable under the doctrine of strict product liability. To the extent necessary, Plaintiffs invoke the doctrine of strict product liability as set forth in Restatement (Second) of Torts §402A and Restatement (Third) of Torts: Product Liability §1-§2. The defective nature of the guardrail and impact head system was a producing cause and cause-in-fact of the injuries sustained by Plaintiffs when their son's vehicle impacted the guardrail on October 29, 2011.

## **7.0 Damages**

7.1 As a result of the occurrence in question, Plaintiffs have sustained severe injuries and damages.

7.2 As a result of these injuries, Plaintiff are entitled to recover compensatory damages in an amount that exceeds the jurisdictional minimum of this court for each of the following elements:

- (a) loss of consortium including damages to the parent-child relationship, including loss of care, comfort, solace, companionship, protection, services, and/or love;

- (b) the lost earnings and loss of earning capacity sustained in the past; and loss of earning capacity that, in reasonable probability, will be sustained in the future;
- (c) mental anguish sustained in the past; and mental anguish that, in reasonable probability, will be sustained in the future.
- (d) exemplary damages

7.3 Plaintiff is also entitled to pre-judgment and post-judgment interest at the highest rates allowed by law.

## **8.0 Demand for Jury**

8.1 Plaintiffs hereby make demand for their right to a trial by jury afforded by the Texas Constitution and the United States Constitution and tenders the requisite fee to the district clerk concurrent with the filing of this Original Petition.

## **9.0 Request for Disclosure**

9.1 Pursuant to Texas Rule of Civil Procedure 194, Defendant Trinity Industries, Inc. is requested to disclose all information as provided by Rule 194.2 within fifty (50) days of being served with a copy of this request and this Original Petition.

9.2 Pursuant to Texas Rule of Civil Procedure 194, Defendant Trinity Highway Product, LLC, is requested to disclose all information as provided by Rule 194.2 within fifty (50) days of being served with a copy of this request and this Original Petition.

## **PRAYER**

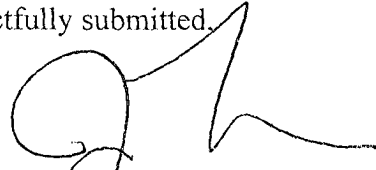
WHEREFORE, Plaintiffs request that Defendants be cited to appear and answer and that on final trial Plaintiffs have and recover:

- a. Judgment against Defendants, jointly and severally, for compensatory damages, including exemplary damages, in an amount that exceeds the minimum jurisdictional limits of the Court more fully set forth above;
- b. Prejudgment and post-judgment interest as provided by law;

- c. Costs of suit; and
- d. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

By: \_\_\_\_\_

  
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