

LOCAL NEWS

Lawyer seeks state probe of guardrails involved in grisly crashes

Posted 5:51 p.m. Tuesday

Updated 6:48 p.m. Tuesday



RALEIGH, N.C. — The lawyer for a Graham man who lost both legs in a crash on Interstate 40 last month said he plans to sue a company that makes highway guardrails and ask the Attorney General's Office to investigate whether the guardrails are effective.

Jay Traylor was on his way home from Raleigh on Jan. 26 when he fell asleep at the wheel, and his SUV veered off I-40 near Hillsborough and slammed into a guardrail. The guardrail sliced through the vehicle and severed his right leg. Surgeons at Duke University Hospital had to amputate his mangled left leg.

Attorney Steven Lawrence said Tuesday that Traylor would have both of his legs if it weren't for the guardrail, which he claims is dangerous. Lawrence also represents four other people injured in guardrail

crashes.

The type of guardrail involved in all of the crashes is called ET Plus and is made by Dallas-based Trinity Industries.

"On any interstate in the state of North Carolina and on a lot of major side roads, you'll see ET Plus terminals everywhere," he said.

The end terminal of the guardrail is supposed to absorb a crash, causing the guardrail to push out to the side. Lawrence said that they used to work that way, but in lawsuits he has filed in other states, he alleges that Trinity reduced the size of its end terminals to save money – without telling highway departments.

Because of the change, the guardrail doesn't collapse properly, he said.

"When you try to push a guardrail through a device that's much smaller, it locks up, impales your vehicle or otherwise violently brings it to a stop," he said.

In Traylor's case, the guardrail came through his floorboard between the accelerator and the brake, barely missed his torso and continued through the back seat, stopping short of the back door of the vehicle.

If the guardrail was designed properly, Lawrence said, "he would've (ridden) down the guardrail, come to a safe stop, and he should've been able to walk away."

Trinity couldn't be reached Tuesday for comment.

State Department of Transportation officials said they couldn't immediately determine how many ET Plus guardrails are in North Carolina.

 [Looking for comments?](#)

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Man now double amputee after crashing into guardrail

Susan Hogan

Updated: Wednesday, May 14, 2014, 9:27 am

Published: Wednesday, May 14, 2014, 7:16 am

Related Coverage

[Expert: Guardrail flaw putting drivers at risk \(http://wpri.com/2014/05/13/expert-guardrail-flaw-putting-drivers-at-risk-may14/\)](http://wpri.com/2014/05/13/expert-guardrail-flaw-putting-drivers-at-risk-may14/)

[Guardrail Dangers: Real-Life Cases \(http://wpri.com/may-14/target-12-guardrail-dangers/guardrail-dangers-real-life-cases/\)](http://wpri.com/may-14/target-12-guardrail-dangers/guardrail-dangers-real-life-cases/)

(WPRI) — A Target 12 Investigators exclusive recently revealed [possible safety concerns involving a guardrail system \(http://wpri.com/2014/05/13/expert-guardrail-flaw-putting-drivers-at-risk-may14/\)](http://wpri.com/2014/05/13/expert-guardrail-flaw-putting-drivers-at-risk-may14/) covering thousands of miles of roads nationwide, including Rhode Island.

Susan Hogan spoke exclusively to a man who lost both his legs after hitting one of these guardrails in question.

Although it's only been 4 months since the accident, Jay Traylor says he's healing however the images of that day will never fade away.

9-1-1 Call January 27, 2014

911 Operator: "Orange County 911 Capt. MacPherson"

Jay Traylor: "I'm looking for help! I lost my legs in a wreck."

911 Operator: "Where are-you?"

Jay Traylor: "We need to get someone out here quick I can't stop the bleeding."

Jay Traylor was driving to his home in North Carolina when he fell asleep at the wheel. He remembers what happened next, "When I came to, that guardrail was coming through the floor panel of the Isuzu Trooper I was driving."

According to a [lawsuit filed on behalf of Traylor \(http://wx.wpri.com/documents/pdf/2014/traylor-original-petition.pdf\)](http://wx.wpri.com/documents/pdf/2014/traylor-original-petition.pdf) the guardrail and end terminal penetrated through the driver's side floorboard, "impaling Traylor" and "causing massive injuries."

- **[Guardrail dangers: Real-life cases \(http://wpri.com/may-14/target-12-guardrail-dangers/guardrail-dangers-real-life-cases/\)](http://wpri.com/may-14/target-12-guardrail-dangers/guardrail-dangers-real-life-cases/)**

Traylor says the force of the guardrail took his wallet out of his back pocket and threw it 20 feet out the back window.

As a result of the accident, Traylor is now a double amputee. The lawsuit claims the guardrail Traylor hit was "defective and unreasonably dangerous" and because of this it did not perform as intended. That guardrail according to court documents is manufactured by Trinity Industries in Dallas, TX.

Steven Lawrence, Traylor's Attorney represents several victims who claim they were seriously injured after hitting a Trinity guardrail end terminal. He says "these are needless tragedies." Lawrence claims Trinity made certain design changes years ago to its end terminals and never "officially notified the Federal Highway Administration." He says by law Trinity is required to do this. Lawrence and other safety experts say it's those changes that are causing the guardrails to fail.

Sean Kane, a safety expert says, "It's failing in a way that's causing the guardrail to spear into the vehicle literally and impact the occupant."

Trinity filed a response to Traylor's lawsuit saying it denies "each and every allegation" and it points out that the lawsuit fails to describe what kind of guardrail end terminal was allegedly impacted saying there is "no allegation that the guardrail involved in the accident is an ET-Plus..." the part of the guardrail in question.

As for Traylor, he believes he is one of the luckier accident victims. Lawsuits have been filed on behalf of others who were killed in car crashes that involved Trinity ET-Plus guardrails.

Traylor says, "I was fortunate I survived, damaged for life, but I survived."

The Federal Highway Administration tells Target 12 that while Trinity inadvertently omitted certain design details, the guardrail met "appropriate crash testing criteria." The FHWA also tells us it's received no complaints from states over the years during which the guardrail has been used.

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THIS REPORT IS FOR THE USE OF THE DIVISION OF MOTOR VEHICLES. THE DATA IS COLLECTED FOR STATISTICAL ANALYSIS AND SUBSEQUENT HIGHWAY SAFETY PROGRAMMING. DETERMINATIONS OF "FAULT" ARE THE RESPONSIBILITY OF INSURERS OR OF THE STATE'S COURTS.

Do not write in these spaces

1

103962859

No. of Units Involved Form 1 of 1 Supplemental Report Non-Reportable

Date Received by DMV 01/28/2014

1

Date 01/27/2014 County ORANGE Time 00:19 Local Use/Patrol Area 140127001DA/01

1
1
1
LOCATION

33 Reason to Roadway Surface 2 Crash occurred in Hillsborough or 2.70 Miles N S E W outside municipality
on 140 Municipality (R.R. Crossing #) 00.10 Miles (0.4-Intersection) (if available)
from MILE 260 toward MILE 259 Use Highway Number, Street Name or Adjacent County or State Line

19
19

UNIT # 1 VEHICLE PEDESTRIAN HIT & RUN COMMERCIAL 20 VEHICLE UNIT # VEHICLE PEDESTRIAN HIT & RUN OTHER

1

Driver JAY SCOTT TRAYLOR
Address
City GRAHAM State NC Zip 272534343

Driver
Address
City State Zip

0

2

Same Address on Driver's License? Yes No Driver's Phone Numbers H (919) W ()
D.L. # CDL License Class C State NC
DOB 05/10/ Vision Obstruction 00 35 Physical Condition 04 38 D.L. Restrictions

Same Address on Driver's License? Yes No Driver's Phone Numbers H () W ()
D.L. # CDL License Class State
DOB Vision Obstruction Physical Condition D.L. Restrictions

26

5

37 Alcohol/Drugs Suspected 0 38 Alcohol/Drugs Test 0 39 Results (I know) 0 40 Vehicle Seizure (DUI) No

37 Alcohol/Drugs Suspected 38 Alcohol/Drugs Test (I know) 39 Results Seizure (DUI) No

10

Owner JEFFERSON JAY TRAYLOR
Address
City State NC Zip 277121961
Plate # Plate NC Plate 2014
VIN

Owner
Address
City State Zip
Plate # Plate State Plate Year
VIN

17

Vehicle ISU Vehicle 1999 41 Vehicle 4 42 Vehicle Drivable No
43 TAD FL-2, BL-1 44 Estimated Damage \$3000
Insurance Company STATE FARM
Policy #

Vehicle Vehicle 41 Vehicle 42 Vehicle Drivable Yes No
43 TAD 44 Estimated Damage \$
Insurance Company
Policy #

18

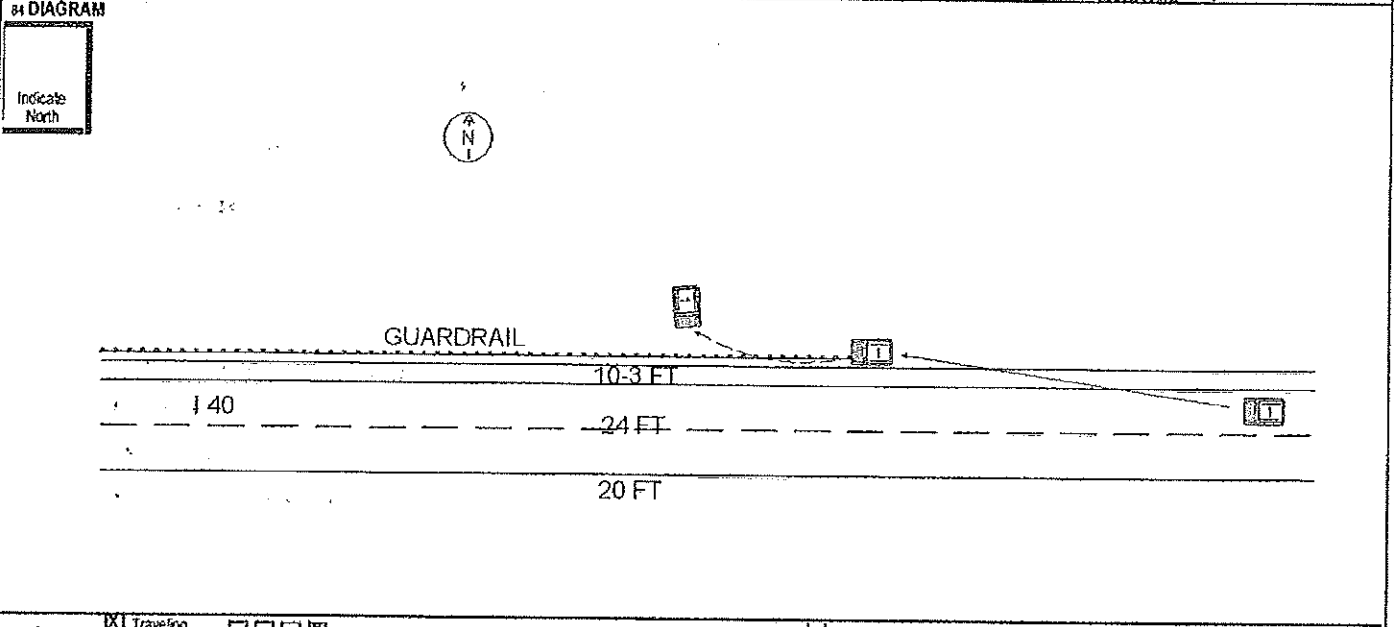
20 COMMERCIAL VEHICLE: Cargo, Carrier Name, Address, Source Carrier Identification Numbers, GVWR, Axles
Unit 45 Cargo Body Type Same Address as Owner? Source: Truck empty papers Driver
US DOT# ICC# Axles on Vehicle including Trailers
State State# IFTA# Gross Vehicle Weight Rating
FE# FE#

21 22 23 24 25 26 27 28 29 30 31 32 Names and Addresses for All Persons (Unit 1/Unit 2 Dvr, Ped, etc. - See Above); Use check blocks if address same as Driver

Table with columns A-H and rows 1-2. Row 1: A 1 1 1 Unit 1-Drv, Ped, etc. see above W M 2 2 3 2 1 2 see above Veh 1 Towed To By: PANCHO'S (ROTATION)/PANCHO'S (ROTATION)

46 Name of EMS A-ORANGE COUNTY EMS 46 Name of EMS
47 Injured Taken by EMS to DUKE HOSPITAL, DURHAM 47 Injured Taken by EMS to (Treatment Facility and City or Town)

49 POINTS OF INITIAL CONTACT (Write in Codes) Unit# <u>1</u> <u>3</u>		VEHICLE INFO.		Veh # <u>1</u>	Veh # <u> </u>	ROADWAY INFO.		WORK ZONE RELATED	
CRASH SEQUENCE (Unit Level) Unit# <u>1</u> Unit# <u> </u>		60 Authorized Speed Limit	65	69 Road Features	0	74 Workzone Area	5		
49 Vehicle Maneuver/Action	4	61 Estimate of Original Traveling Speed	65	70 Road Character	3	75 Work Activity			
50 Non-Motorist Action		62 Estimate of Speed at Impact	65	71 Road Classification	1	83 Work Area Marked			
51 Non-Motorist Location Prior to Impact		63 Tire Impressions Before Impact (ft.)	0	72 Road Surface Type	3	81 Crash Location			
52 Crash Sequence - First Event for This Unit	1	64 Distance Traveled After Impact (ft.)	62	73 Road Configuration	4	TRAILER INFO.		Unit# <u>1</u>	Unit# <u> </u>
53 Crash Sequence - Second Event	41	65 Emergency Vehicle Use		74 Access Control	2	82 Trailer Type	00		
54 Crash Sequence - Third Event		66 Post Crash Pre (if "Yes" check block)	<input type="checkbox"/>	75 Number of Lanes	4	84 Trailer No. Axles			
55 Crash Sequence - Fourth Event		67 School Bus - Contact Vehicle	<input type="checkbox"/>	76 Traffic Control Type	0	Width (inches)			
56 Most Harmful Event for This Unit	41	68 School Bus - Noncontact Vehicle	<input type="checkbox"/>	77 Traffic Control Oper		Length (feet)			
57 Distance/Direction to Object Struck	3	COMMERCIAL VEHICLE: Hazardous Materials Involvement Unit Haz Mat Placard <input type="checkbox"/> Yes <input type="checkbox"/> No From Placard indicate: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Hazardous Cargo <input type="checkbox"/> Yes <input type="checkbox"/> No 4-digit placard number or 1-digit number from Released (does not include fuel tank) name from diamond or box bottom of diamond Carrying Haz Mat <input type="checkbox"/> Yes <input type="checkbox"/> No							
58 Vehicle Under/Over/Under						2nd Trailer No. Axles			
59 Vehicle Defects	0					Width (inches)			
						Length (feet)			
						83 Unit# <u> </u>	Overwidth Permit # <u> </u>		
						Overwidth Trailer and Overwidth Mobile Home			



Unit# 1 was: Traveling Parked Facing H S E W on I 40 Unit# was: Traveling Parked Facing H S E W on

85 NARRATIVE (Include pertinent and unusual aspects, which are not listed elsewhere on the form) **VEHICLE 1 WAS TRAVELING WEST ON I40. VEHICLE 1 RAN OFF THE ROAD TO THE RIGHT AND STRUCK A GUARDRAIL. VEHICLE 1 THEN TRAVELED DOWN AN EMBANKMENT AND CAME TO REST.**

86 Type of Owner GUARDRAIL- Owner Address ADDITIONAL PROPERTY DAMAGE State Property? Estimated Damage \$3100
 Phone 2122 CLARENCE WALTERS RD, HILLSBOROUGH, NC 27278-919732430

WITNESSES

Name Address Phone No.

Name Address Phone No.

TRAFFIC VIOLATION(S)

Name Charge(s)

Name Charge(s)

Officer Name D L Metts JR Observation Number 2912 Department North Carolina State Highway P Date of Report 01/27/2014

CAUSE NO. _____

JAY SCOTT TRAYLOR,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	
TRINITY INDUSTRIES, INC, and	§	DALLAS COUNTY, TEXAS
TRINITY HIGHWAY PRODUCTS, LLC.,	§	
	§	
Defendants.	§	
	§	
	§	____ JUDICIAL DISTRICT
	§	

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Jay Scott Traylor (“Traylor”), Plaintiff, by counsel, and files this Original Petition against Trinity Industries, Inc. and Trinity Highway Products, LLC (collectively “Trinity”), 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 Plaintiff is an individual residing in Alamance County, North Carolina.

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 Dallas county under Texas Civil Practice and Remedies Code §15.002(a)(2) because at least one Defendant is a resident of Dallas County. Venue is proper to all other Defendants is proper under Texas Civil Practice and Remedies Code §15.005.

4.0 The Occurrence

4.1 This case arises out of an accident that occurred on or about September 27, 2014 on westbound I-40 near the junction with I-85 in Orange County, North Carolina.

4.2 At the time of the accident, Plaintiff was driving a 1999 Isuzu [VIN: JACDJ58X2X793144] with North Carolina license plate PPA6024 on westbound I-40.

4.3 While driving Plaintiff's vehicle veered off the right hand side of the roadway and into a guardrail end terminal.

4.4 At the time of the accident, the guardrail and end terminal in question was defective and unreasonably dangerous. As a result of this condition, instead of performing as

intended, the guardrail penetrated through the driver's side floorboard area. This penetration continued into the passenger compartment and impaled Plaintiff, causing massive injuries.

4.5 As a result of this incident, Plaintiff is now a double amputee. He has sustained serious and permanently disabling injuries that will impact him for the rest of his life.

4.6 The end terminal system struck by Traylor was designed, manufactured and marketed by Defendant Trinity. As intended, the end terminal is designed to extrude the guardrail through the head so 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.

5.0 Conditions Precedent

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

6.0 Factual Background

6.1 Trinity Industries, Inc. is the parent corporation of Trinity Highway Products, LLC and as such controls Trinity Highway Products, LLC (collectively "Trinity").

6.2 Trinity is in the business of manufacturing and selling various highway safety and construction products for use across the United States and specifically in and more specifically manufactures and sells the ET-Plus guardrail end terminal ("ET-Plus") under an exclusive licensing agreement from Texas A & M University.

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

6.4 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.

6.5 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.

6.6 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 North Carolina.

6.7 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.

6.8 North Carolina, like other states, requires that its Department of Transportation (“NCDOT”) approve any product installed on its roadways. Each highway project in North Carolina is governed by contract documents issued by NCDOT. These documents require that any products installed on North Carolina’s highways be both previously approved by the NCDOT and compliant with National Cooperative Highway Research Program Report 350 (“NCHRP 350”), if tested prior to January 1, 2011, or tested using the Manual for Assessing Safety Hardware (“MASH”), if presented for testing after that date. Products previously accepted under NCHRP 350 do not need to be retested unless, of course, the product is changed.

6.9 NCHRP 350, Recommended Procedures for the Safety Performance Evaluation of Highway Features, establishes a performance range on several criteria that guardrail terminals

must satisfy through as many as seven different tests to be deemed safe and reliable for installation. The prime contractor who submits a winning bid on a project must sign contract documents agreeing with the NCDOT to install only state-approved, NCHRP 350 or MASH-compliant products.

6.10 North Carolina has an Approved Products List for the product at issue. Trinity manufactures and sells guardrail end terminals under the names ET-2000 Plus, ET-Plus and ET-31, among others. The ET-Plus, also known as ET-2000 Plus, was approved by NCDOT and placed on NCDOT's Approved List for End Terminal. The version of the ET-Plus approved by NCDOT remains on NCDOT's current Approved Product List. NCDOT has not approved any other version of the ET-Plus.

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

6.12 Beginning sometime between 2000 and 2005, a different or altered ET-Plus started appearing along the National Highway System and on the roads in North Carolina, 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.

6.13 Beginning in early 2005, yet another different or altered ET-Plus started appearing along the National Highway System and on the roads in North Carolina; 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.

6.14 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.

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

6.16 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.

6.17 Based upon information and belief, Trinity never officially notified or petitioned the Federal Highway Administration, the North Carolina 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.

6.18 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.

6.19 Once "throat lock" occurs, as is the case in this action, the ET-Plus system violently stops or redirects the vehicle in a manner causing serious injury or death – often by impalement.

6.20 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, secretly modified, inherently dangerous ET-Plus systems have been in use across the country for several years preceding the incident at issue in this lawsuit.

7.0 Cause of Action – Defendant Trinity

7.1 Defendant Trinity has 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 North Carolina. Defendant Trinity knew, or in the exercise of ordinary care should have known, that the impact head 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 end terminal into the stream of commerce in a defective and unreasonably dangerous condition and by certifying it as NCHRP 350 compliant. This negligence on the part of Defendant Trinity was a proximate cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the end terminal on or about January 27, 2014.

7.2 Defendant Trinity is the manufacturer of the guardrail and impact head system installed by a contractor at the location in question and in place at the time of the accident. 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 end terminal 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, Plaintiff invokes the doctrine of strict product liability as set forth in the Restatement (Second) of Torts §402A and Restatement (Third) of Torts; Product Liability §1-§2. The defective nature of the end terminal system was a producing

cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the guardrail on or about January 27, 2014.

7.3 The Texas Uniform Commercial Code provides for an implied warranty of merchantability on products sold in Texas. As such, there was an implied warranty that the end terminal system was merchantable. Defendant Trinity breached this implied warranty because the end terminal system was of such condition to render it unfit for the ordinary purpose for which it was to be used. This breach of the implied warranty of merchantability by Defendant Trinity was a producing cause and cause-in-fact of the injuries sustained by Plaintiff when his car impacted the end terminal system on or about January 27, 2014.

7.4 The Texas Uniform Commercial Code provides for an implied warranty of fitness for a particular purpose on products sold in Texas. As such, there was an implied warranty that the guardrail and impact head system was fit for the particular purpose of use on roadways such as I-40. Defendant Trinity has reason to know the particular purpose for which the end terminal system was intended, and that users like Plaintiff would rely on the skill and judgment of Defendant Trinity to select or furnish a suitable end terminal system. Defendant Trinity breached this implied warranty because the end terminal system was not suitable for use on I-40. This breach of the implied warranty of fitness for a particular purpose by Defendant Trinity was a producing cause and cause-in-fact of the injuries sustained by Plaintiff when her car impacted the guardrail on or about January 14, 2014.

8.0 Damages

8.1 As a result of the occurrence in question, Plaintiff sustained severe, permanent, and disabling injuries.

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

8.2.1 The cost of reasonable and necessary medical care sustained in the past and that in reasonable probability will be sustained in the future;

8.2.2 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;

8.2.3 Physical impairment sustained in the past; and physical impairment that, in reasonable probability, will be sustained in the future;

8.2.4 Disfigurement sustained in the past; and disfigurement that, in reasonable probability, will be sustained in the future;

8.2.5 Physical pain sustained in the past and physical pain that, in reasonable probability, will be sustained in the future;

8.2.6 Mental anguish sustained in the past; and mental anguish that, in reasonable probability, will be sustained in the future.

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

9.0 Demand for Jury

9.1 Plaintiff hereby makes demand for his 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.

10.0 Request for Disclosure

10.1 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.

10.2 Pursuant to Texas Rule of Civil Procedure 194, Defendant Trinity Highway Products, 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, Plaintiff requests that Defendants be cited to appear and answer and that on final trial Plaintiff have and recover:

- a. Judgment against Defendants, jointly and severally, for compensatory and punitive 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 Plaintiff may be justly entitled.

Respectfully submitted,

By: 

w/permission by: e.c.
Steve Sumner
State Bar of Texas No. 19508500
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Dallas, Texas 75219
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- and -

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ATTORNEYS FOR PLAINTIFF

CAUSE NO. DC-14-01965

JAY SCOTT TRAYLOR
Plaintiff,

vs.

TRINITY INDUSTRIES, INC.; and
TRINITY HIGHWAY PRODUCTS, L.L.C.

Defendant.

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§

IN THE DISTRICT COURT

OF DALLAS COUNTY, TEXAS

14TH JUDICIAL DISTRICT

DEFENDANT, TRINITY INDUSTRIES, INC.'s ANSWER
and SPECIAL EXCEPTIONS TO PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the TRINITY INDUSTRIES, INC., (herein "INDUSTRIES"), an *IMPROPERLY* named Defendant in the above entitled and numbered cause, and files this its Special Exceptions and Original Answer, herein and for such Answer would respectfully show the Court as follows:

I. GENERAL DENIAL

1. Defendant Trinity Industries, Inc., by authority of Rule 92 of the Texas Rules of Civil Procedure, exercises the right to generally deny each and every allegation stated by Plaintiff against it and, further, to require Plaintiff to prove such claims by a preponderance of the evidence. Defendant INDUSTRIES reserves the right to amend its pleadings as permitted by the rules.

II. VERIFIED PLEAS AND DENIALS

2. Defendant Trinity Industries, Inc. is not liable in the capacity in which he is sued. TEX. R. CIV. P. 93(2).

3. There is a defect of parties. TEX.. R. CIV. P. 93(4).

III. SPECIAL EXCEPTIONS

4. Trinity Industries, Inc. specially excepts to the Plaintiff's Original Petition in its entirety for the reason that it fails to specify the maximum amount of damages being sought from Defendant INDUSTRIES; INDUSTRIES is hereby deprived of fair notice, and under the provisions of Rule 47, Texas Rules of Civil Procedure, and calls upon Plaintiff to amend so as to specify the maximum amount being claimed. Therefore INDUSTRIES prays for Judgment of the Court.

5. Trinity Industries, Inc. specially excepts to the prayer of Plaintiff's Original Petition and specifically to the portion thereof which states:

"Plaintiff request that Defendants be cited to appear and answer rant that on final trial Plaintiff have and recover:

- a. Judgment against Defendants, jointly and severally, for compensatory damages in an amount that exceed the minimum jurisdictional limits of the Court more fully set forth above;
- b. Prejudgment and post-judgment interest as provided by law;
- c. Cost of suit; and
- d. Such other and further relief to which the Plaintiff may be justly entitled."

for the reason that it fails to specify the maximum amount of damages being sought from Defendant INDUSTRIES. INDUSTRIES is hereby deprived of fair notice, and under the provisions of Rule 47, Texas Rules of Civil Procedure, and calls upon Plaintiff to amend so as to specify the maximum amount being claimed. INDUSTRIES therefore prays for Judgment of the Court.

6. Trinity Industries, Inc. specially excepts to Plaintiff's the vague reference to "a guardrail end terminal" in paragraph 4.3; "the guardrail and end terminal in question" and "the guardrail" in paragraph 4.4; and "the end terminal system struck by Traylor" in paragraph 4.6—

for the reason that Plaintiff fails to describe what kind of guardrail end terminal device was allegedly impacted (and there is no allegation that the guardrail involved in the accident is an ET-Plus, as repeatedly referenced in part 6.0 (Factual Background)). INDUSTRIES is hereby deprived of fair notice, and calls upon Plaintiff to amend his pleadings under Texas Rule of Civil Procedure 47 to specify the kind of end terminal device that Plaintiff allegedly impacted. INDUSTRIES therefore prays for Judgment of the Court.

7. Trinity Industries, Inc. specially excepts to the vague reference of “the impact head system” and two references to “the end terminal” in paragraph 7.1; “the guardrail and impact head system installed by a contractor at the location in question and in place at the time of the accident” in paragraph 7.2; the multiple references to the “end terminal system” in paragraphs 7.2, 7.3, and 7.4; the “guardrail and impact head system” in paragraph 7.4; and “the guardrail” in paragraph 7.4.—for the reason that Plaintiff fails to describe the kind of guardrail end terminal device Plaintiff allegedly impacted (and there is no allegation that the guardrail involved in the accident is an ET-Plus, as repeatedly referenced in part 6.0 (Factual Background)). INDUSTRIES is hereby deprived of fair notice, and calls upon Plaintiff to amend under Texas Rule of Civil Procedure 47 to specify the kind of end terminal device that Plaintiff allegedly impacted. INDUSTRIES therefore prays for Judgment of the Court.

IV. AFFIRMATIVE DEFENSES

8. Trinity Industries, Inc. asserts that Plaintiff has failed to make reasonable efforts to mitigate damages as required by law.

9. Trinity Industries, Inc. seeks the protection, to the extent that it may apply, and invokes Tex. Civ. Prac. & Rem. Code § 82.005 requiring Plaintiff to prove that there was a safer

alternative design that would have prevented or significantly reduces the risk of injuries to Plaintiff without substantially impairing the utility of the equipment in question; and, that such safer alternative design was economically and technologically feasible at the time the alleged equipment left the control of Defendant Trinity Highway Products, L.L.C. by the application of existing or reasonably achievable scientific knowledge.

10. Trinity Industries, Inc. seeks the protection, to the extent that it may apply, and invokes Tex. Civ. Prac. & Rem. Code § 82.008 et. seq. Co-Defendant, Trinity Highway Products, L.L.C., manufactures and sells certain highway safety products, however, it is unknown to Defendants at this time if the subject system impacted by Plaintiff was a product of Trinity Highway Products, L.L.C. However, all highway guardrail and terminal systems manufactured by Trinity Highway Products, L.L.C. are subject to pre-market approval by the Federal Highway Administration, an agency of the federal government. Specifically, the Federal Highway Administration issues letters accepting or approving highway products, including guardrail systems and end treatments, for use on the National Highway Systems (NHP). Trinity Highway Products, L.L.C. fully complies with Federal Highway Administration's procedures and requirements with respect to a product's pre-market approved. As previously stated, all of the guardrail end treatment systems that Defendant THP makes available to the Texas Department of Transportation for selection, purchase, use, placement and installation on state highways have been approved by the Federal Highway Administration, pursuant to federal regulation. The Plaintiff has failed in his burden to rebut the presumption before filing this lawsuit.

11. At the time and on the occasion in question, Plaintiff failed to exercise that degree of care which a person of ordinary prudence would have exercised under the same or similar

circumstances. Such failure on his part was the sole cause, sole proximate cause, or one of the proximate causes of the accident and any resulting injuries and damages.

12. Defendant would show that Plaintiff was liable for acts or conduct at the time and on the occasion in question which constitute negligence and was responsible for any event causing damage, injury or harm to himself and others and, consequently is subject to the doctrine of comparative responsibility.

13. Further answering herein, and in the alternative, Defendant INDUSTRIES says that the Plaintiff's claims of injury and damage, if any, was the result of an unavoidable accident.

14. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing and without waiving the same, Defendant INDUSTRIES would state that in the event it is held legally responsible to Plaintiff, any such responsibility being expressly denied by INDUSTRIES, then INDUSTRIES hereby invokes the current provisions of Chapter 33, Comparative Responsibility, of the Texas Civil Practice & Remedies Code, which provisions would entitle INDUSTRIES, among other things, to reduction for the negligence, liability, responsibility or other conduct alleged which is attributable to any other party or settling person or third party. Alternatively, INDUSTRIES would invoke the provisions of Chapter 32 and Chapter 33 of the Texas Civil Practice & Remedies Code as that Code affects the rights of contribution and indemnity between parties to litigation in the State of Texas and the provisions thereunder whereby INDUSTRIES is entitled to a credit for any settlement paid or to be paid to Plaintiff.

15. Pleading further, and in the alternative, if such be necessary, and subject to the foregoing and without waiving the same, Defendant INDUSTRIES would state that in the event it

is held legally responsible to Plaintiff, any such responsibility being expressly denied by INDUSTRIES, the configuration or operational characteristics of the product at issue are changed or altered by affirmative conduct of some person in a manner that INDUSTRIES could not have reasonably foreseen would occur in the intended or foreseeable use of the product.

16. Trinity Industries, Inc. asserts assumption of risk.

17. Trinity Industries, Inc. asserts res judicata and/or collateral estoppel and/or issue preclusion and/or claim preclusion.

18. Trinity Industries, Inc. asserts waiver.

19. Trinity Industries, Inc. respectfully reserves the right to file an amended Answer in this cause in the manner authorized by the Texas Rules of Civil Procedure.

V. JURY DEMAND

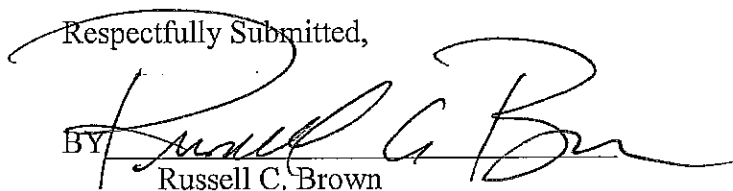
20. Trinity Industries, Inc., one of the Defendants herein, pursuant to the provisions of Rule 216 of the Texas Rules of Civil Procedure, hereby formally makes this demand and application for a jury by trial in the above entitled and numbered cause.

VI. PRAYER

21. **WHEREFORE, PREMISES CONSIDERED,** Trinity Industries, Inc. prays that the Court grant its special exceptions, that Plaintiff be required to re-plead in conformity with INDUSTRIES's special exceptions, that Plaintiff take nothing by reason of this action, and that INDUSTRIES be awarded its reasonable and necessary attorney's fees and taxable costs of Court. INDUSTRIES further prays for such other relief at law or in equity to which INDUSTRIES may show itself to be justly entitled.

Respectfully Submitted,

BY


Russell C. Brown
State Bar No. 03167510

RUSSELL C. BROWN, P.C.
P.O. Box 1780
Henderson, Texas 75653-1780
(903)657-8553
(903)657-6003(fax)

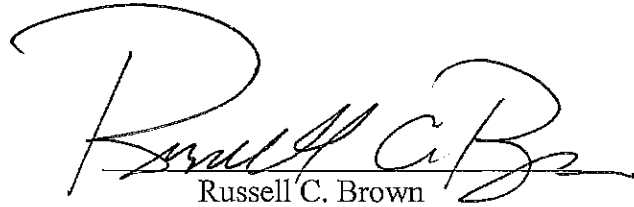
**ATTORNEYS FOR
THE TRINITY DEFENDANTS**

CERTIFICATE OF SERVICE

A hereby certify that on this the 24th day of March, 2014, a true and correct copy of the foregoing document was forwarding via facsimile and Certified Mail, Return Receipt Requested to the following counsel of record:

Steve Sumner
Texas Bar No.:19508500
Sumner, Schick and Pace, L.L.P.
3811 Turtle Creek Blvd., Suite 600
Dallas, Texas 75219

Steve Lawrence
Texas Bar No.:24038227
The Lawrence Law Firm
700 Lavaca Street
Austin, Texas 78701




Russell C. Brown

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

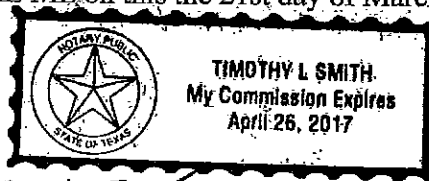
“BEFORE ME, the undersigned authority on this day personally appeared Dani Cook, Senior Director of Business Services, Trinity Industries, Inc. who, being first by me duly sworn on oath says that he has read and reviewed the foregoing Answer, that she has personal knowledge of the statements made in Section III and that such statements are true and correct.

FURTHER, this Affiant sayeth not.”



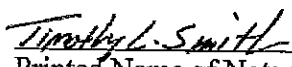
Dani Cook
Senior Director of Business Services
Trinity Industries, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 21st day of March, 2014, to certify which witness my hand and official seal.





Notary Public in Dallas County, Texas



Printed Name of Notary

CAUSE NO. DC-14-01965

JAY SCOTT TRAYLOR
Plaintiff,

vs.

TRINITY TRINITY HIGHWAY
PRODUCTS, L.L.C., INC.; and
TRINITY HIGHWAY PRODUCTS, L.L.C.

Defendant.

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IN THE DISTRICT COURT

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14TH JUDICIAL DISTRICT

**DEFENDANT, TRINITY HIGHWAY PRODUCTS, L.L.C. ANSWER
and SPECIAL EXCEPTIONS TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the TRINITY HIGHWAY PRODUCTS, L.L.C., (herein "THP"), a Defendant in the above entitled and numbered cause, and files this its Special Exceptions and Original Answer, herein and for such Answer would respectfully show the Court as follows:

I. GENERAL DENIAL

1. Defendant Trinity Highway Products, L.L.C., by authority of Rule 92 of the Texas Rules of Civil Procedure, exercises the right to generally deny each and every allegation stated by Plaintiff against it and, further, to require Plaintiff to prove such claims by a preponderance of the evidence. Defendant THP reserves the right to amend its pleadings as permitted by the rules.

III. SPECIAL EXCEPTIONS

2. Trinity Highway Products, L.L.C. specially excepts to the Plaintiff's Original Petition in its entirety for the reason that it fails to specify the maximum amount of damages being sought from Defendant THP; THP is hereby deprived of fair notice, and under the provisions of Rule 47, Texas Rules of Civil Procedure, and calls upon Plaintiff to amend so as to specify the

maximum amount being claimed. Therefore THP prays for Judgment of the Court.

3. Trinity Highway Products, L.L.C. specially excepts to the prayer of Plaintiff's Original Petition and specifically to the portion thereof which states:

“Plaintiff request that Defendants be cited to appear and answer rant that on final trial Plaintiff have and recover:

- a. Judgment against Defendants, jointly and severally, for compensatory damages in an amount that exceed the minimum jurisdictional limits of the Court more fully set forth above;
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for the reason that it fails to specify the maximum amount of damages being sought from Defendant THP. THP is hereby deprived of fair notice, and under the provisions of Rule 47, Texas Rules of Civil Procedure, and calls upon Plaintiff to amend so as to specify the maximum amount being claimed. THP therefore prays for Judgment of the Court.

4. Trinity Highway Products, L.L.C. specially excepts to Plaintiff's the vague reference to “a guardrail end terminal” in paragraph 4.3; “the guardrail and end terminal in question” and “the guardrail” in paragraph 4.4; and “the end terminal system struck by Traylor” in paragraph 4.6—for the reason that Plaintiff fails to describe what kind of guardrail end terminal device was allegedly impacted (and there is no allegation that the guardrail involved in the accident is an ET-Plus, as repeatedly referenced in part 6.0 (Factual Background)). THP is hereby deprived of fair notice, and calls upon Plaintiff to amend his pleadings under Texas Rule of Civil Procedure 47 to specify the kind of end terminal device that Plaintiff allegedly impacted. THP therefore prays for Judgment of the Court.

5. Trinity Highway Products, L.L.C. specially excepts to the vague reference of “the

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IV. AFFIRMATIVE DEFENSES

6. Trinity Highway Products, L.L.C. asserts that Plaintiff has failed to make reasonable efforts to mitigate damages as required by law.

7. Trinity Highway Products, L.L.C. seeks the protection, to the extent that it may apply, and invokes Tex. Civ. Prac. & Rem. Code § 82.005 requiring Plaintiff to prove that there was a safer alternative design that would have prevented or significantly reduces the risk of injuries to Plaintiff without substantially impairing the utility of the equipment in question; and, that such safer alternative design was economically and technologically feasible at the time the alleged equipment left the control of Defendant Trinity Highway Products, L.L.C. by the application of existing or reasonably achievable scientific knowledge.

8. Trinity Highway Products, L.L.C. seeks the protection, to the extent that it may apply, and invokes Tex. Civ. Prac. & Rem. Code § 82.008 et. seq. Co-Defendant, Trinity

Highway Products, L.L.C., manufactures and sells certain highway safety products, however, it is unknown to Defendants at this time if the subject system impacted by Plaintiff was a product of Trinity Highway Products, L.L.C. However, all highway guardrail and terminal systems manufactured by Trinity Highway Products, L.L.C. are subject to pre-market approval by the Federal Highway Administration, an agency of the federal government. Specifically, the Federal Highway Administration issues letters accepting or approving highway products, including guardrail systems and end treatments, for use on the National Highway Systems (NHP). Trinity Highway Products, L.L.C. fully complies with Federal Highway Administration's procedures and requirements with respect to a product's pre-market approval. As previously stated, all of the guardrail end treatment systems that Defendant THP makes available to the Texas Department of Transportation for selection, purchase, use, placement and installation on state highways have been approved by the Federal Highway Administration, pursuant to federal regulation. The Plaintiff has failed in his burden to rebut the presumption before filing this lawsuit.

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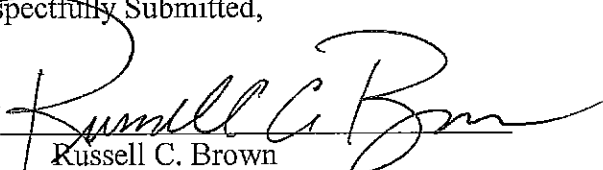
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VI. PRAYER

19. **WHEREFORE, PREMISES CONSIDERED**, Trinity Highway Products, L.L.C. prays that the Court grant its special exceptions, that Plaintiff be required to re-plead in conformity with THP's special exceptions, that Plaintiff take nothing by reason of this action, and that THP be awarded its reasonable and necessary attorney's fees and taxable costs of Court. THP further prays for such other relief at law or in equity to which THP may show itself to be justly entitled.

Respectfully Submitted,

BY


Russell C. Brown
State Bar No. 03167510

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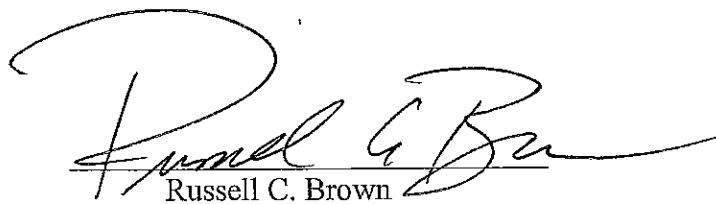
**ATTORNEYS FOR
THE TRINITY DEFENDANTS**

CERTIFICATE OF SERVICE

A hereby certify that on this the 24th day of March, 2014, a true and correct copy of the foregoing document was forwarding via facsimile and Certified Mail, Return Receipt Requested to the following counsel of record:

Steve Sumner
Texas Bar No.:19508500
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Russell C. Brown