

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSOURI

FILED
JUN - 6 2006
DEANA AVERSMAN
LAFAYETTE CO. CIRCUIT CLERK

DORIS BRANDT, surviving spouse of)
decedent, CARL BRANDT, and natural)
mother of decedent, DAVID BRANDT,)

Plaintiff,)

v.)

Case No. 05LF-CV01066

TRINITY INDUSTRIES, INC.,)
SUPERIOR RAIL SYSTEM, LLC,)
and)

MISSOURI HIGHWAYS &)
TRANSPORTATION COMMISSION,)

Defendants.)

SECOND AMENDED PETITION FOR DAMAGES

Plaintiff, Doris Brandt (hereinafter "Plaintiff"), for her cause of action for the wrongful death of Carl Brandt and David Brandt (hereinafter collectively "Decedents") against Defendants Trinity Industries, Inc. (hereinafter "Trinity"), Superior Rail System, LLC (hereinafter "Superior") and the Missouri Highway and Transportation Commission (hereinafter "MHTC"); states and alleges as follows:

1. Plaintiff is a resident of Lititz, Pennsylvania.
2. Plaintiff is a member of the class of persons entitled to bring a cause of action for the wrongful death of Decedents pursuant to R.S.Mo. § 537.080.
3. Defendant Trinity is a Delaware corporation with its principal place of business in Dallas, Texas. At all times pertinent to this action, Defendant Trinity has transacted business within the State of Missouri and has sold products within the State of Missouri that it manufactured and/or designed. Defendant Trinity has significant and numerous contacts with the State of Missouri and is subject to the

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jurisdiction of this Court pursuant to R.S.Mo. § 506.500. Defendant Trinity may be served through its registered agent at the address indicated in the caption above.

4. Defendant Superior is a Missouri corporation with its principal place of business in Wellington, Lafayette County, Missouri. Defendant Superior may be served through its registered agent at the address indicated in the caption above.
5. Defendant MHTC is a Missouri state agency acting under authority of state law and is subject to suit pursuant to R.S.Mo. §§ 536.600 - 537.650. Defendant MHTC may be served through its Director at the address indicated in the caption above.
6. Venue is proper in Jackson County, Missouri.
7. On June 7, 2003, at approximately 1:45 p.m., Carl Brandt was driving a 1996 Chevrolet Tahoe (hereinafter "the Tahoe") westbound on Interstate 70, approximately four-tenths of a mile west of the Stadium Boulevard interchange. David Brandt was a passenger in the Tahoe.
8. At the same time and location, the Tahoe left the roadway on the right side and collided with the end terminal of a metal guardrail (hereinafter the "End Terminal").
9. The End Terminal failed to function correctly and allowed the guardrail to penetrate and travel through the occupant compartment of the Tahoe.
10. As a result of the penetration of the guardrail into the occupant compartment of the Tahoe, Carl Brandt and David Brandt suffered severe injuries resulting in their deaths.

11. The End Terminal was an ET-2000 PLUS model/type that was designed and/or manufactured by Defendant Trinity.
12. Following damage to the guardrail that occurred in a prior collision, the End Terminal was installed on the guardrail by Defendant Superior in 2002 at the direction of Defendant MHTC.
13. The independent acts and/or omissions of all defendants resulted in indivisible injuries to Plaintiff. Therefore, all defendants are jointly and severally liable for the damages sustained by Plaintiff.

COUNT I

STRICT LIABILITY OF DEFENDANT TRINITY

14. Plaintiff incorporates by reference the allegations of all other paragraphs of this Petition as if fully set forth herein.
15. Prior to June 7, 2003, in the ordinary course of its business, Defendant Trinity designed, engineered, manufactured, distributed and/or sold the End Terminal and placed the End Terminal in the stream of commerce for sale to the general public as ultimate consumers.
16. Defendant Trinity had a duty to make the End Terminal reasonably safe when put to a reasonably anticipated use.
17. At the time that the End Terminal left the control of Defendant Trinity, and at the time Decedents died as a result of the injuries described herein, the End Terminal was in a defective condition and unreasonably dangerous when put to a reasonably anticipated use. The End Terminal was unreasonably dangerous by reason of defects in that it was improperly designed and failed to provide

adequate protection to individuals, including Decedents, who could be expected to use the End Terminal.

18. The End Terminal was expected to reach and did reach the hands of its owner without substantial change in the condition in which it was designed, manufactured, distributed and sold, and the End Terminal was being used in a manner intended by Defendant Trinity on June 7, 2003.
19. Defendant Trinity knew that the End Terminal would be used without inspection for defects and represented that it could be safely used and would be fit for the ordinary purposes for which it was purchased.
20. The End Terminal failed to perform as designed in that it:
 - a. Failed to absorb the kinetic energy of the Brandt vehicle;
 - b. Failed to flatten, bend and extrude the guardrail away from the Brandt vehicle;
 - c. Failed to bring the Brandt vehicle to a controlled stop;
 - d. Failed to feed the guardrail through the feeder chute and flattening throat;
 - e. Failed to direct the Brandt vehicle away from the ravine that the guardrail was put up to protect against;
 - f. Failed to consistently extrude in the manner in which it was designed to perform;
 - g. Failed to extrude and allowed the guardrail to kink, buckle and bend in a way that it entered the Brandt vehicle in a spear-like motion;
 - h. Failed to feed the guardrail joint through the feeder chute and flattening throat;

- i. Failed to comply with the provisions of NCHRP Report 350; and
 - j. The breakaway support post failed to buckle or yield during the impact as designed.
21. Defendant Trinity knew or should have known that the End Terminal had a history of failing in the manner previously described because of prior accidents, incidents and testing results of this product.
22. As a direct and proximate result of the defective nature of the End Terminal, Decedents suffered serious injuries that resulted in their deaths.
23. As a direct and proximate result of the defective nature of the End Terminal, Plaintiff and others have suffered, and will suffer in the future, the loss of services, support, instruction, companionship, consortium, and guidance of Decedents.
24. As a direct and proximate result of the defective nature of the End Terminal, Decedents suffered extreme pain and mental anguish prior to their deaths and suffered damages.
25. As a direct result of the injuries and death of decedents, funeral and burial expenses were incurred.
26. In addition, decedents suffered damages between the time they became aware of their imminent harm on June 7, 2003 and the time of their death on that same date in that they endured great fear and conscious pain and suffering from their injuries suffered due to the actions and omissions of defendants.

27. The acts and/or omissions of Defendant Trinity demonstrate deliberate indifference to, and conscious disregard for, the safety of others. Therefore, an award of punitive damages is appropriate in this case.

WHEREFORE, Plaintiff prays for judgment against all Defendants jointly and severally on Count I of her Petition for Damages for a reasonable sum of money for damages, for prejudgment interest pursuant to Mo. Rev. Stat. §408.040, for punitive damages against Defendant Trinity, for costs and expenses incurred, and for such further relief as this Court may deem just and proper.

COUNT II

NEGLIGENCE OF DEFENDANT TRINITY

28. Plaintiff incorporates by reference the allegations of all other paragraphs of this Petition as if fully set forth herein.
29. Prior to June 7, 2003, in the ordinary course of its business, Defendant Trinity designed, engineered, manufactured, distributed and/or sold the End Terminal and placed the End Terminal in the stream of commerce for sale to the general public as ultimate consumers.
30. Defendant Trinity had a duty to make the End Terminal reasonably safe when put to a reasonably anticipated use.
31. Defendant Trinity knew or should have known that the End Terminal had a history of failing in the manner previously described because of prior accidents, incidents and testing results of this product.
32. Defendant Trinity was careless and negligent and breached its duty of care in each of the following respects:

- a. Defendant Trinity carelessly and negligently designed and sold the End Terminal in that the End Terminal provided inadequate protection to persons traveling in a vehicle that collides with the End Terminal in a reasonably foreseeable accident;
- b. Defendant Trinity failed to warn and disclose that the End Terminal extruder had a propensity to fail when the joint would not go through the extruder;
- c. Defendant Trinity failed to provide adequate installation instructions;
- d. Defendant Trinity failed to provide adequate training and instruction to those installing the End Terminal;
- e. Defendant Trinity failed to design the End Terminal in a safe manner in that the End Terminals:
 1. Failed to absorb the kinetic energy of the Brandt vehicle;
 2. Failed to flatten, bend and extrude the guardrail away from the Brandt vehicle;
 3. Failed to bring the Brandt vehicle to a controlled stop;
 4. Failed to feed the guardrail through the feeder chute and flattening throat;
 5. Failed to direct the Brandt vehicle away from the ravine that the guardrail was put up to protect against;
 6. Failed to consistently extrude in the manner in which it was designed to perform;

7. Failed to extrude and allowed the guardrail to kink, buckle and bend in a way that it entered the Brandt vehicle in a spear-like motion;
 8. Failed to feed the guardrail joint through the feeder chute and flattening throat;
 - f. Defendant Trinity failed to design the End Terminal in compliance with the provisions of NCHRP Report 350;
 - g. Defendant Trinity failed to design the breakaway support post so that it would buckle or yield during the impact;
 - h. Defendant Trinity failed to require the use of soil plates on the guardrail posts.
33. As a direct and proximate result of the negligence of Defendant Trinity, Decedents suffered serious injuries resulting in their deaths.
 34. As a direct result of the injuries and death of decedents, funeral and burial expenses were incurred.
 35. In addition, decedents suffered damages between the time they became aware of their imminent harm on June 7, 2003 and the time of their death on that same date in that they endured great fear and conscious pain and suffering from their injuries suffered due to the negligence of defendants.
 36. As a direct and proximate result of the carelessness and negligence of Defendant Trinity, Plaintiff and others have suffered, and will suffer in the future, the loss of services, support, instruction, companionship, consortium, and guidance of Decedents.

37. As a direct and proximate result of the negligence and carelessness of Defendant Trinity, Decedents suffered severe pain and mental anguish prior to their deaths and suffered damages.

38. The acts and/or omissions of Defendant Trinity demonstrate deliberate indifference to, and conscious disregard for, the safety of others. Therefore, an award of punitive damages is appropriate in this case.

WHEREFORE, Plaintiff prays for judgment against all Defendants jointly and severally on Count II of her Petition for Damages for a reasonable sum of money for damages, for prejudgment interest pursuant to Mo. Rev. Stat. §408.040, for punitive damages against Defendant Trinity, for costs and expenses incurred, and for such further relief as this Court may deem just and proper.

COUNT III

NEGLIGENCE OF DEFENDANT SUPERIOR

39. Plaintiff incorporates by reference the allegations of all other paragraphs of this Petition as if fully set forth herein.

40. Defendant Superior was careless and negligent and breached its duty of care in each of the following respects:

- a. Defendant Superior carelessly and negligently installed the End Terminal and guardrail in that the End Terminal and guardrail were installed in such a manner that they provided inadequate protection to persons traveling in a vehicle that collides with the End Terminal and guardrail in a reasonably foreseeable accident;

- b. Defendant Superior failed to perform proper soil testing prior to installation of the End Terminal and guardrail;
- c. Defendant Superior failed to follow the removal, replacement and installation instructions for the End Terminal and guardrail;
- d. Defendant Superior failed to properly supervise and train its employees who removed, replaced and installed the End Terminal and guardrail;
- e. Defendant Superior failed to remove, replace and install the wooden posts of the guardrail according to the installation instructions;
- f. Defendant Superior failed to remove and replace parts of the End Terminal and guardrail that were damaged in the accident prior to the Brandt collision;
- g. Defendant Superior failed to assess and evaluate the damage to the End Terminal, the extruder, the feeder chute and the flattening throat when repairing the End Terminal after the prior accident;
- h. Defendant Superior failed to accurately and adequately assess the terrain and the hazard being protected against when installing, inspecting, repairing and maintaining the End Terminal and the guardrail;
- i. Defendant Superior failed to adequately prepare, maintain, and repair the soil surrounding the guardrail and End Terminal posts;
- j. Defendant Superior failed to install soil plates on the breakaway support posts installed with the guardrail and End Terminal;
- k. Defendant Superior failed to install the End Terminal best suited for this location when it installed the ET-2000 PLUS;

1. Defendant Superior failed to select an End Terminal and guardrail for installation that complied with NCHRP Report 350.
41. As a direct and proximate result of the negligence of Defendant Superior, Decedents suffered serious injuries resulting in their deaths.
42. As a direct result of the injuries and death of decedents, funeral and burial expenses were incurred.
43. In addition, decedents suffered damages between the time they became aware of their imminent harm on June 7, 2003 and the time of their death on that same date in that they endured great fear and conscious pain and suffering from their injuries suffered due to the negligence of defendants.
44. As a direct and proximate result of the carelessness and negligence of Defendant Superior, Plaintiff and others have suffered, and will suffer in the future, the loss of services, support, instruction, companionship, consortium, and guidance of Decedents.
45. As a direct and proximate result of the negligence and carelessness of Defendant Superior, Decedents suffered severe pain and mental anguish prior to their deaths and suffered damages.
46. The acts and/or omissions of Defendant Superior demonstrate deliberate indifference to, and conscious disregard for, the safety of others. Therefore, an award of punitive damages is appropriate in this case.

WHEREFORE, Plaintiff prays for judgment against all Defendants jointly and severally on Count III of her Petition for Damages for a reasonable sum of money for damages, for prejudgment interest pursuant to Mo. Rev. Stat. §408.040, for punitive damages against

Defendant Superior, for costs and expenses incurred, and for such further relief as this Court may deem just and proper.

COUNT IV

NEGLIGENCE OF DEFENDANT MHTC

47. Plaintiff incorporates by reference the allegations of all other paragraphs of this Petition as if fully set forth herein.
48. At all times mentioned herein, the guardrail to which the End Terminal was attached was a part of the public highway system in Missouri which was being used for and was designated as a public highway for the use of the public in the operation of motor vehicles.
49. At all times mentioned herein, Defendant MHTC had authority and control over, and was responsible for the design, condition and maintenance of that part of the public highway on which the guardrail and the End Terminal was located and on which Decedents sustained their injuries.
50. At all times mentioned herein, MHTC assumed a duty to maintain the highway, guardrails, End Terminals and clear areas, including but not limited to, the shoulder area of the highway which was adjacent to the traveled portion of the highway, and to protect against unreasonably dangerous conditions in these areas.
51. At all times mentioned herein, MHTC had a duty to barricade and warn of the unreasonably dangerous condition beyond the highway and clear area and on the border of the highway at issue in this case.

52. At all times mentioned herein, Defendant MHTC knew or should have known of the unreasonable risk and danger posed by the defective nature of and/or defective installation of the End Terminal.
53. Defendant MHTC, acting by and through its employees and agents, caused the portion of public highway on which Decedents were injured to be dangerous and unsafe for the public, and was negligent and breached its duty of care in each of the following regards:
- a. Defendant MHTC installed the End Terminal even though Defendant MHTC knew, or should have known, that the End Terminal was unreasonably dangerous by reason of defects in that it was improperly designed and failed to provide adequate protection to individuals, including Decedents, who could be expected to use the End Terminal;
 - b. Defendant MHTC installed, or allowed to be installed, an End Terminal that did not comply with NCHRP Report 350;
 - c. Defendant MHTC installed the End Terminal and guardrail in such a manner, or allowed the End Terminal and guardrail to be installed in such a manner, that it provided inadequate protection to persons traveling in a vehicle that collides with the End Terminal in a reasonably foreseeable accident;
 - d. Defendant MHTC failed to adequately monitor the maintenance, repair, condition and/or installation of the End Terminal and guardrail;
 - e. Defendant MHTC failed to hire qualified contractors to install, maintain and repair the End Terminal and guardrail;

- f. Defendant MHTC failed to adequately instruct and supervise Defendant Superior in the installation, maintenance and repair of the End Terminal and guardrail;
- g. Defendant MHTC failed to adequately maintain, or to oversee the maintenance, of the shoulder, soil and area surrounding the guardrail and End Terminal;
- h. Defendant MHTC failed to adequately install, inspect, maintain and repair the guardrail and End Terminal;
- i. Defendant MHTC failed to adequately repair and inspect the guardrail and End Terminal after it had been damaged in accidents prior to the Brandt collision;
- j. Defendant MHTC failed to accurately and adequately assess the terrain and the hazard being protected against when choosing to install, inspect, repair and maintain the End Terminal and the guardrail;
- k. Defendant MHTC failed to properly monitor, repair or require the repair of damage to the guardrail that would not travel through the extruder on the End Terminal;
- l. Defendant MHTC failed to grade the roadside to prevent drop offs and steep grades that would be hazardous to travelers;
- m. Defendant MHTC failed to install rumble strips along the fogline and shoulder of the highway at issue in this collision;
- n. Defendant MHTC failed to select for installation the safest End Terminal for this location;

- o. Defendant MHTC failed to select an End Terminal that complied with NCHRP Report 350;
 - p. Defendant MHTC failed to design and protect against unreasonably dangerous conditions in the clear areas adjoining the highway, including but not limited to, the shoulder and guardrail area at issue in this case;
 - q. Defendant MHTC failed to barricade and warn of the unreasonably dangerous condition beyond the clear area and on the border of the highway at issue in this case; and
 - r. Defendant MHTC failed to adequately prepare, maintain and repair the soil surrounding the guardrail and End Terminal posts.
54. As a direct and proximate result of the negligence of Defendant MHTC, Decedents suffered serious injuries resulting in their deaths.
55. As a direct result of the injuries and death of decedents, funeral and burial expenses were incurred.
56. In addition, decedents suffered damages between the time they became aware of their imminent harm on June 7, 2003 and the time of their death on that same date in that they endured great fear and conscious pain and suffering from their injuries suffered due to the negligence of defendants.
57. As a direct and proximate result of the carelessness and negligence of Defendant MHTC, Plaintiff and others have suffered, and will suffer in the future, the loss of services, support, instruction, companionship, consortium, and guidance of Decedents.

58. As a direct and proximate result of the negligence and carelessness of Defendant MHTC, Decedents suffered severe pain and mental anguish prior to their deaths and suffered damages.

WHEREFORE, Plaintiff prays for judgment against all Defendants jointly and severally on Count IV of her Petition for Damages for a reasonable sum of money for damages, for prejudgment interest pursuant to Mo. Rev. Stat. §408.040, for costs and expenses incurred, and for such further relief as this Court may deem just and proper.

HENNING & BOUGH, P.C.

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ATTORNEYS FOR PLAINTIFF

Signature of this document certifies this document was served to the persons named below on the date and in the manner indicated:

Person Served	Party	Date	Method
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