

<b>CIVIL ACTION COVER SHEET</b>	<b>Trial Court of Massachusetts</b> Superior Court Department County: <b>SUFFOLK</b>	Docket No _____
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Plaintiff(s) <b>DIANNA LYNN ALLEN</b>	Defendant(s) <b>TRINITY INDUSTRIES, INC.; TRINITY HIGHWAY PRODUCTS, LLC; GENERAL MOTORS, LLC; MUNI-TECH, INC.; AND JOHN DOE</b>
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Attorney(s), Firm Name, Address, and Telephone <b>Richard J. Sullivan, Esq., BBO#554085</b> <b>Sullivan &amp; Sullivan, LLP</b> <b>83 Walnut Street</b> <b>Wellesley, MA 02141</b> <b>Tel: (781) 263-9400</b>	Attorney(s) (if known)
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**ORIGIN CODE AND TRACK DESIGNATION**

Place an (x) in one box only:

<input checked="" type="checkbox"/> 1. F01 Original Complaint	<input type="checkbox"/> 4. F04 District Ct. Appeal c. 231, § 97 (X)
<input type="checkbox"/> 2. F02 Removal to Sup. Ct. c. 231, § 104 (F) (Before trial) (F)	<input type="checkbox"/> 5. F05 Reactivated after Rescript; Relief from judgment/order (Mass. R. Civ. P. 60) (X)
<input type="checkbox"/> 3. F03 Retransfer to Sup. Ct. c. 231, § 102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)

**TYPE OF ACTION AND TRACK DESIGNATION (See Reverse Side)**

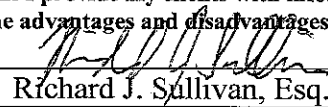
CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?	
<b><u>B05</u></b>	<b><u>Products Liability</u></b>	<b>(A)</b>	<b>(x) Yes</b>	<b>( ) No</b>

**TORT CLAIMS**  
(Attach additional sheets as necessary)

A. Documented medical expenses to date:	
1. Total hospital expenses	\$100,000.00
2. Total Doctor expenses	\$50,000.00
3. Total chiropractic	
4. Total physical therapy	\$0.00
5. Total other expenses - X-Ray	\$20,000.00
	<b>Subtotal \$170,000.00</b>
B. Documented lost wages and compensation to date	\$0.00
C. Documented property damage to date	
D. Reasonably anticipated future medical and hospital expenses	
E. Reasonably anticipated lost wages	
F. Other documented items of damages (describe)	
G. Brief description of plaintiff's injury, including nature and extent of injury (describe): <b>Plaintiff's car swerved off the highway at a high speed to avoid another vehicle that had suddenly and unexpectedly cut into her lane of traffic, causing plaintiff's car to strike a guardrail which impaled her vehicle. The collision with the negligently designed guardrail caused the plaintiff's right leg, below the knee, to be amputated, among other injuries.</b>	
	<b>TOTAL \$170,000.00</b>

**CONTRACT CLAIMS**

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods." Signature of Attorney of Record of Plaintiff <div style="text-align: center;"> Richard J. Sullivan, Esq.</div>	Date 8/4/14
---	----------------

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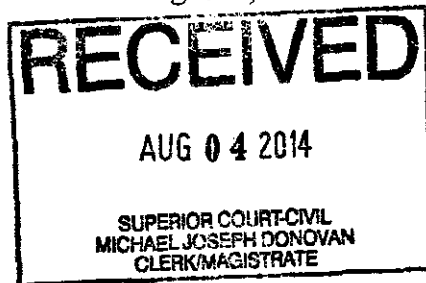
Telephone (781) 263-9400  
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Ernest J. Palazzolo, Jr.  
Thomas P. Kelley

August 4, 2014

VIA HAND DELIVERY

Civil Clerk's Office  
Suffolk Superior Court  
3 Pemberton Square  
Boston, MA 02108



Re: Dianna Lynn Allen  
Vs. Trinity Industries, Inc.; Trinity Highway Products, LLC; General Motors, LLC; Muni-Tech, Inc.; and John Doe

Dear Sir/Madam:

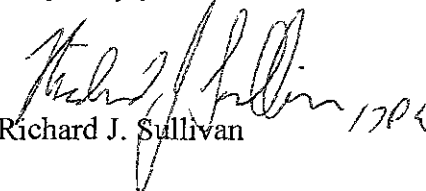
Enclosed for filing please find:

1. Complaint;
2. Civil Action Cover Sheet; and
3. Check in amount of \$300.00 for filing fee and five (5) Summonses.

Kindly return the Summons along with a stamped copy of this cover letter with the docket number assigned in the enclosed self-addressed, stamped envelope.

Thank you.

Very truly yours,

  
Richard J. Sullivan

RJS/tk  
Enclosures

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION #

14-2473

DIANNA LYNN ALLEN )

PLAINTIFF, )

VS. )

TRINITY INDUSTRIES, INC., )  
TRINITY HIGHWAY PRODUCTS, LLC, )  
GENERAL MOTORS, LLC, )  
MUNI-TECH, INC., AND )  
JOHN DOE )

DEFENDANTS. )

**COMPLAINT**

COMES NOW PLAINTIFF, DIANNA LYNN ALLEN, and files this action against defendants, Trinity Industries, Inc., a Delaware Corporation and Trinity Highway Products, LLC, a Delaware Limited Liability Company, Muni-Tech, Inc., a Massachusetts Corporation, General Motors, LLC, a Delaware Limited Liability Company, and John Doe and shows this Court as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, Dianna Lynn Allen (“Allen”), is a citizen of the United States and maintains her personal residence in Worcester County, Massachusetts at 6 Carla Circle, Webster, Massachusetts, 01570.

2. Defendant Trinity Industries, Inc. ("Trinity Industries") is a Delaware corporation authorized to do business in the Commonwealth of Massachusetts with its principal office located at 2525 Stemmons Freeway, Dallas, Texas 75207.
3. Trinity Highway Products, LLC ("Trinity Highway") is a Delaware Limited Liability Company authorized to business in the Commonwealth of Massachusetts with its principal office located at 2525 Stemmons Freeway, Dallas, Texas 75207.
4. Both Trinity Industries and Trinity Highway Products' agent for service in Massachusetts is C T Corporation System, 155 Federal Street, Suite 700, Boston, Massachusetts 02110.
5. Defendant Muni-Tech, Inc. ("Muni-Tech"), is a Massachusetts Corporation authorized to do business in the Commonwealth of Massachusetts with its principal office at 344 John Dietsch Blvd Unit #3, North Attleboro, MA 02760.
6. Defendant John Doe is reasonably believed to be the driver of a vehicle at the same location, date, and time as the events giving rise to this cause of action. Plaintiff asserts that it is likely John Doe's true identity will be revealed during the discovery process.
7. Defendant General Motors LLC ("GM"), is a Delaware Limited Liability Company authorized to do business in the Commonwealth of Massachusetts with its principal office at 300 Renaissance Center, Detroit, Michigan 48265.
8. GM's agent for service in Massachusetts is Corporation Service Company, 84 State Street, Boston, MA 02109.
9. The plaintiff's claims against each of the non-resident defendants arise from their:
  - a. transacting business in the Commonwealth of Massachusetts;
  - b. contracting to supply services or things in the Commonwealth of Massachusetts;

- c. causing tortious injury by an act or omission in the Commonwealth of Massachusetts; and/or
- d. causing tortious injury in the Commonwealth of Massachusetts by an act or omission outside of the Commonwealth of Massachusetts and regularly doing and soliciting business and engaging in other persistent courses of conduct, and deriving substantial revenue from goods used or consumed or services rendered in the Commonwealth of Massachusetts.

### **BACKGROUND**

- 10. Trinity Industries, Inc. is the parent corporation of Trinity Highway Products, LLC and as such controls Trinity Highway Products, LLC.
- 11. Trinity Highway Products, LLC is in the business of manufacturing and selling various highway safety and construction products for use across the United States and specifically in Massachusetts and more specifically manufactures and sells the ET-Plus guardrail end terminal ("ET-Plus") under an exclusive licensing agreement from Texas A & M University.
- 12. The component of the ET-Plus impacted by the vehicle when hit head on is commonly referred to as a "head" and, when used in conjunction with the standard "W-beam" style guardrail seen throughout the roads and highways of America, is designed to safely absorb and dissipate the energy of a vehicular impact.
- 13. Upon impact, the head is designed to extrude the guardrail and flatten it out into a ribbon, thus absorbing the majority of the collision energy.
- 14. The ET-Plus version at issue is actually a modified version of what was originally designed and market as the ET-2000.

15. The original production of the ET-Plus, built to approved specifications, was overall very successful and not only did it work for an initial impact, it continued, in at least the majority of instances, to work even when struck again in a separate incident and before maintenance crews were able to repair it.
16. The ET-Plus, along with each and every other product used on the National Highway System throughout the United States must undergo testing to determine and validate crashworthiness before the product may be placed on the National Highway System or on the roads of the Commonwealth of Massachusetts.
17. The Federal Highway Administration, a division of the United States Government under the U.S. Department of Transportation, along with other state and federal organizations are charged with establishing the crashworthiness criteria for products such as the ET-Plus.
18. Once a product is approved for use along the National Highway System, its design specifications cannot be altered; or if altered, the product must undergo additional testing and approval prior to its placement on the National Highway System.
19. Beginning sometime between 2000 and 2005, a different or altered ET-Plus started appearing along the National Highway System and on the roads in the Commonwealth of Massachusetts, in particular, a revised or altered "head" was manufactured with an exit gap of approximately 1.0 inches rather than approximately 1.5 inches as originally tested, approved, and manufactured.
20. Beginning in early 2005, yet another different or altered ET-Plus started appearing along the National Highway System and on the roads in the Commonwealth of Massachusetts;

in particular, a revised or altered 'head' was manufactured with a 4" feeder chute (as opposed to the prior approved 5" feeder chute) and a shorter overall height.

21. In addition to the above, due to the shortened height, the feeder rails are actually inserted into the head .75" rather than being welded flush to it as originally designed and approved, thus drastically reducing the overall space of the feeder chute.
22. Trinity 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.
23. The above-described requests (September 2005 and August 2007) dealt with components sold with the ET-Plus and their configuration, and nowhere in these design changes does Trinity mention the reduced feeder chute size or any other changes to the ET-Plus head.
24. Based upon information and belief, Trinity never officially notified or petitioned the Federal Highway Administration, the Massachusetts Department of Transportation or any branch or unit of any federal or state government for approval or consideration of the feeder chute changes as described above.
25. The ET-Plus, as modified in 2005 and at issue in this case, does not allow the guardrail to feed properly through the chute due to the reduced internal area of the head itself causing the guardrail to "throat lock" in the head during impact.
26. Once "throat lock" occurs, as is the case in this action, the energy of the crash is diverted elsewhere, and as in this case, violently stops or redirects the vehicle in a manner causing serious injury or death.
27. Based on information and belief, Trinity, at all times relevant hereto, knew of the dangerous conditions created by its unapproved, modified ET-Plus system, as literally

hundreds of thousands of these unapproved, modified, inherently dangerous ET-Plus systems have been in use across the country for several years preceding the incident at issue in this lawsuit.

### **FACTS**

28. Paragraphs 1 through 27 above are incorporated hereby as though fully and completely set forth.
29. At or about 6:00 p.m. on Thursday, August 4, 2011, Allen was traveling northbound on Rt. 395 in the town of Oxford near the 4.4-mile marker in her 2008 Cadillac CTS automobile.
30. At the time and place described in the preceding paragraph Allen was cut off by an unknown driver, exited the roadway to avoid a collision, lost control of the ability to steer her vehicle and impacted an ET-Plus end terminal system with an ET-Plus head modified consistent with the revisions listed above (“Subject ET-Plus”).
31. The impacted Subject ET-Plus end terminal, rather than performing properly, caused the guardrail to lock inside the end terminal and fail to dissipate the energy of the vehicle in a safe manner that would have brought it to a safe stop or otherwise minimized the severity of the accident.
32. As a result of the failure of the Subject ET-Plus, decedent lost her right leg below the knee and suffered other injuries.

### **COUNT ONE**

#### **NEGLIGENCE AS TO TRINITY HIGHWAY**

33. Paragraphs 1 through 32 are incorporated by reference as though fully and completely set forth.



34. Trinity Highway negligently and unlawfully changed, modified and altered their ET-Plus guardrail system, and more specifically, its end-cap unit which resulted in the guardrail at issue, and guardrails across the United States, failing and rather than properly absorbing the energy of an impact, it locks up and injures or kills vehicle occupants due to the trauma of the sudden stop, by catapulting the vehicle, redirecting it in an unsafe manner, or, as in this case, causing the guardrail to impale the vehicle.
35. Trinity Highway knew of failures of the altered ET-Plus and failed to disclose either the modifications to the product or the dramatic increase in severe, even death-producing collisions occurring across the United States.
36. As the direct and proximate result of Trinity Highway's negligence, the plaintiff sustained severe and permanent physical injury, suffered great pain of body and anguish of mind, including the loss of her right leg below the knee, required extensive hospital and medical care and treatment, incurred medical expenses, lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against Trinity Highway, in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

## **COUNT TWO**

### **NEGLIGENCE AS TO TRINITY INDUSTRIES**

37. Paragraphs 1 through 36 are incorporated by reference as though fully and completely set forth.
38. Trinity Industries, as the parent company of Trinity Highway, negligently and unlawfully changed, modified and altered their ET-Plus guardrail system, and more specifically, its

end-cap unit which resulted in the guardrail at issue, and guardrails across the United States, failing and rather than properly absorbing the energy of an impact, it locks up and injures or kills vehicle occupants due to the trauma of the sudden stop, by catapulting the vehicle, redirecting it in an unsafe manner, or, as in this case, causing the guardrail to impale the vehicle.

39. Trinity Industries knew of failures of the altered ET-Plus and failed to disclose either the modifications to the product or the dramatic increase in severe, even death-producing collisions occurring across the United States.

40. As the direct and proximate result of Trinity Industries' negligence, the plaintiff sustained severe and permanent physical injury, suffered great pain of body and anguish of mind, including the loss of her right leg below the knee, required extensive hospital and medical care and treatment, incurred medical expenses, lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against Trinity Industries, in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

### **COUNT THREE**

#### **NEGLIGENCE AS TO MUNI-TECH**

41. Paragraphs 1 through 40 are incorporated by reference as though fully and completely set forth.

42. Muni-Tech was responsible for the maintenance, installation, and inspection of guardrail systems, and more specifically the guardrail system at issue in this lawsuit, and therefore owed a duty of reasonable care to all drivers on highways equipped with those guardrails.

43. Muni-Tech breached its duty of care by installing and maintaining a defective guardrail system.

44. As the direct and proximate result of Muni-Tech's negligence, the plaintiff sustained severe and permanent physical injury, suffered great pain of body and anguish of mind, including the loss of her right leg below the knee, required extensive hospital and medical care and treatment, incurred medical expenses, lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against Muni-Tech, in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

#### **COUNT FOUR**

#### **NEGLIGENCE AS TO GM**

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

46. Defendant GM manufactured the sold the defective Cadillac CTS that caused Allen's accident and injuries.

47. At the time immediately proceeding the collision with the guardrail system, the steering mechanism malfunctioned preventing Allen from steering clear of the hazard.

48. As the direct and proximate result of GM's negligence, the plaintiff sustained severe and permanent physical injury, suffered great pain of body and anguish of mind, including the loss of her right leg below the knee, required extensive hospital and medical care and treatment, incurred medical expenses, lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against GM, in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

## **COUNT FIVE**

### **NEGLIGENCE AS TO JOHN DOE**

49. Paragraphs 1 through 48 are incorporated as though fully and completely set forth.

50. Defendant John Doe is reasonably believed to be the driver of a vehicle at the same location, date, and time as the events giving rise to Allen's cause of action.

51. Doe, driving in the same direction as Allen, negligently and recklessly cut Allen off and caused Allen to swerve off the road to avoid a collision with Doe or other drivers.

52. As the direct and proximate result of Doe's negligence, the plaintiff sustained severe and permanent physical injury, suffered great pain of body and anguish of mind, including the loss of her right leg below the knee, required extensive hospital and medical care and treatment, incurred medical expenses, lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against John Doe, in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

## **COUNT SIX**

### **BREACH OF IMPLIED WARRANTY V. TRINITY HIGHWAY**

53. Paragraphs 1 through 52 are incorporated as though fully and completely set forth.

54. Trinity Highway manufactured and sold the defective ET-Plus that caused Allen's injuries.

55. Trinity Highway impliedly warranted to the plaintiff that the guardrail system was merchantable, safe, and fit for ordinary purposes. Trinity Highway is a merchant with respect to goods and materials of the kind involved in the accident. The guardrail system, and the warnings and instructions, if any, which accompanied them were defective, and

therefore the product was not, in fact, merchantable, safe, and fit as warranted by Trinity Highway. Therefore, Trinity Highway has breached these warranties to the plaintiff.

56. As the direct and proximate result of Trinity Highway's breaches of the implied warranties which accompanied the guardrail system, the plaintiff sustained severe and permanent physical injury, including the loss of her right leg below the knee, suffered great pain of body and anguish of mind, required extensive hospital and medical care and treatment, incurred medical expenses, and lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against Trinity Highway in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

#### **COUNT SEVEN**

##### **BREACH OF IMPLIED WARRANTY V. TRINITY INDUSTRIES**

57. Paragraphs 1 through 56 are incorporated as though fully and completely set forth.

58. Trinity Industries, as the parent company of Trinity Highway, manufactured and sold the defective ET-Plus that caused Allen's injuries.

59. Trinity Industries, as the parent company of Trinity Highway, impliedly warranted to the plaintiff that the guardrail system was merchantable, safe, and fit for ordinary purposes. Trinity Industries is a merchant with respect to goods and materials of the kind involved in the accident. The guardrail system, and the warnings and instructions, if any, which accompanied them were defective, and therefore the product was not, in fact, merchantable, safe, and fit as warranted by Trinity Industries. Therefore, Trinity Industries has breached these warranties to the plaintiff.

60. As the direct and proximate result of Trinity Industries' breaches of the implied warranties which accompanied the guardrail system, the plaintiff sustained severe and permanent physical injury, including the loss of her right leg below the knee, suffered great pain of body and anguish of mind, required extensive hospital and medical care and treatment, incurred medical expenses, and lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against Trinity Industries in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

## **COUNT EIGHT**

### **BREACH OF IMPLIED WARRANTY V. MUNI-TECH**

61. Paragraphs 1 through 60 are incorporated as though fully and completely set forth.

62. Defendant Muni-Tech purchased, installed, and maintained the Subject ET-Plus that caused Allen's injuries.

63. Muni-Tech impliedly warranted to the plaintiff that the guardrail system was merchantable, safe, and fit for ordinary purposes. Muni-Tech is a merchant with respect to goods and materials of the kind involved in the accident. The guardrail system, and the warnings and instructions, if any, which accompanied them were defective, and therefore the product was not, in fact, merchantable, safe, and fit as warranted by Muni-Tech. Therefore, Muni-Tech has breached these warranties to the plaintiff.

64. As the direct and proximate result of Muni-Tech's breaches of the implied warranties which accompanied the guardrail system, the plaintiff sustained severe and permanent physical injury, including the loss of her right leg below the knee, suffered great pain of

body and anguish of mind, required extensive hospital and medical care and treatment, incurred medical expenses, and lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against Muni-Tech in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

## **COUNT NINE**

### **BREACH OF IMPLIED WARRANTY V. GENERAL MOTORS**

65. Paragraphs 1 through 64 are incorporated as though fully and completely set forth.

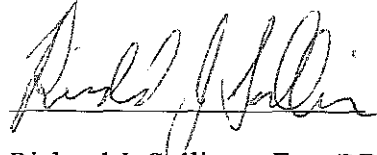
66. Defendant GM manufactured and sold the defective Cadillac CTS that caused Allen's accident and injuries.

67. GM impliedly warranted to the plaintiff that the Cadillac CTS was merchantable, safe, and fit for ordinary purposes. GM is a merchant with respect to goods and materials of the kind involved in the accident. The Cadillac CTS, and the warnings and instructions, if any, which accompanied it were defective, and therefore the product was not, in fact, merchantable, safe, and fit as warranted by GM. Therefore, GM has breached these warranties to the plaintiff.

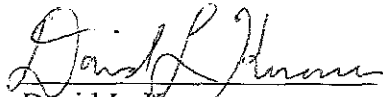
68. As the direct and proximate result of GM's breaches of the implied warranties which accompanied the guardrail system, the plaintiff sustained severe and permanent physical injury, including the loss of her right leg below the knee, suffered great pain of body and anguish of mind, required extensive hospital and medical care and treatment, incurred medical expenses, and lost time from work; and her ability to engage in normal and usual activities has been adversely affected.

WHEREFORE, the plaintiff, Dianna Lynn Allen, demands judgment against General Motors in an amount sufficient to compensate her for her losses and damages, together with interest and costs.

PLAINTIFF CLAIMS A TRIAL BY JURY



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Dated: August 4, 2014





## Guard rail safety malfunctioning, blamed for gruesome injuries

Posted: Oct 03, 2014 1:00 PM EDT

Updated: Oct 04, 2014 10:43 AM EDT

By Mike Beaudet and Producer Kevin Rothstein

DEDHAM, Mass. ([MyFoxBoston.com](http://www.myfoxboston.com))-- After another car cut her off while driving down I-395 in Webster, Dianna Allen remembers heading straight for the guard rail.

That August evening in 2011, she slammed into a device known as the guard rail end terminal, a device often marked in bright yellow and black that is meant to protect vehicles and their occupants as much as possible from what are often high-speed collisions.

But the end terminal didn't work as intended, and the guard rail behind it speared Allen's car, cutting off her leg.

"I remember going into the guard rail. I remember having the guard rail come up into my vehicle. And I remember just hearing a lot of gravel and metal," she told FOX Undercover reporter Mike Beaudet. "I remember looking down after we stopped, and there was no foot. There was just my bone."

The guard rail traveled through the passenger compartment of her Cadillac and went out the trunk.

"They also said that if I had been a little bit shorter and a little bit closer to the steering wheel, I probably would've been severed," Allen said. "In half."

It wasn't supposed to happen that way.

When a vehicle hits the end terminals of a guard rail, the device is designed to move with the oncoming car, extruding the guardrail out like a ribbon and absorbing energy from the impact.

But in Allen's case, the end terminal she struck, a model known as the ET-Plus, was found more than 100 feet away from the crash. In a lawsuit, Allen says the ET-Plus is prone to what's known as "throat lock", where the railing is unable to be extruded by the end terminal. The result is often that the guard rail turns into a giant spear that skewers oncoming cars. Horrific crashes across the country have occurred, resulting in more than a dozen lawsuits.

The manufacturer of the ET-Plus, Dallas-based Trinity Industries, stands by its product.

"Trinity has a high degree of confidence in the performance and integrity of the ET-Plus system...", the company said in a statement.

Trinity also points out that the Federal Highway Administration continues to allow the ET-Plus's use on American highways.

The attorney representing Allen, Steven Lawrence, has other clients across the country who say they were injured by a malfunctioning ET-Plus end terminal.

"It's really a nationwide problem," Lawrence said. "I believe that there's at least one person maimed or killed each month. And I believe you're looking at hundreds or thousands of victims when this is all uncovered."

"What is the problem with these Trinity guard rails?" Beaudet asked him.

"They shrunk the device to make it from a functioning product that would save your life to a product that simply does not work. And ends up impaling you, or worse," Lawrence replied.

Lawrence said that Trinity changed the design in 2005 of the ET-Plus, shrinking what's known as a feeder chute from five to four inches. That made the units about \$2 dollars cheaper but, according to Lawrence, made them prone to malfunctioning, often with gruesome results.

Trinity is also facing a lawsuit from a whistleblower who says the company knew the ET-Plus was defective yet continued selling it. After a mistrial, a retrial is set for later this month.

Trinity says the whistleblower's allegations are false and misleading. As for the crashes that resulted in guard rails piercing vehicles, Trinity says it is impossible to blame its end terminal without knowing exactly how each crash happened. The company also points out that the Federal Highway Administration's reviewed complaints of the ET-Plus and re-affirmed its approval of the device in 2012 and again this year.

But as of last week, the ET-Plus is no longer an approved product in Massachusetts.

"We're taking steps to suspend use of these Trinity ET-Plus guard rail end treatments," said Frank DePaola, administrator of the Massachusetts Department of Transportation's highway division.

"What's your concern about these guard rail ends?" Beaudet asked him.

"There have been some accidents reported where significant damage to cars or vehicles and personal injury have occurred because of a failure in the manufacture of the end treatment," DePaola replied.

DePaola says hundreds, perhaps thousands, of the modified ET-Plus terminals are on Massachusetts roads and highways. For now, those will remain in place. The directive from MassDOT means that it will no longer buy the ET-Plus. Nevada and Missouri have issued similar orders.

"The woman we talked to believes the state needs to do more than just stop using them in the future," Beaudet said.

"(I) Sympathize with the woman's condition but we need to make sure that we have enough evidence before we go out and do a wholesale change," DePaola replied.

"How much evidence do you need? There are serious injuries, there are deaths all over the country. What's it going to take to make the change?"

"What we need to do is first of all find out how prevalent they are, determine what the impact would be to our entire program," DePaola said.

Allen says that's not enough.

"Unless they want to come and walk in my shoes every day... get them off the roads," she said. "Take them away."

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