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April 1, 2015

Subject: Overview of Litigation Involving the ET Plus® System

To Our Stakeholders:

Before I begin, I would like to state that it is extremely important to our Company that all of our nation's roadways are safe for motorists.

Most of our stakeholders are aware of the adverse jury verdict rendered last October in the False Claims Act litigation pertaining to the ET Plus® System (ET Plus). The Company maintains that Mr. Harman's allegations are without merit. The Federal District Court has yet to enter its judgment on the verdict, and our post-trial proceedings remain pending. The relator (whistleblower) in this case, Joshua Harman, could receive up to 30 percent of the final judgment (excluding fees and costs).

The Company maintains that Mr. Harman's allegations are without merit, and it intends to challenge a judgment on the verdict on appeal to the United States Court of Appeals for the Fifth Circuit.

While we respect the jury's service in this case, we believe the jury's verdict was not supported by the evidence. We believe the verdict resulted, in part, from a misapplication of the law and Mr. Harman's complete disregard for the position publicly asserted by the Federal government, the true plaintiff in the case, that there was no fraud and that the ET Plus is "crashworthy" and eligible for Federal-aid reimbursement under the applicable standards.

### **False Claims Act**

The False Claims Act was enacted to punish those who intentionally defraud the Federal government, thereby financially damaging the U.S. Treasury. In simple terms, it is difficult to understand how the United States Government has been damaged given the government's stated position that since 2005, the ET Plus has been compliant with Federal crashworthiness standards and therefore eligible, in the past, present, and future, for Federal-aid reimbursement. In fact, the Federal Highway Administration (FHWA) has stated that the ET Plus has "an unbroken chain of eligibility."

Following the jury verdict, the FHWA requested that Trinity Highway perform a series of eight crash-tests on the ET Plus. The ET Plus passed each of the eight tests, as affirmed by the FHWA and its independent expert. In an FHWA press conference held on March 13, 2015, FHWA officials reconfirmed, as they have since 2012, that the ET Plus meets all crash-test standards and remains eligible for Federal-aid reimbursement when installed on the nation's highways.

## **The ET Plus**

The Texas A&M Transportation Institute designed the end-terminal system technology employed in the ET Plus. Trinity Highway manufactures and markets the ET Plus under an exclusive license granted by Texas A&M University System of its intellectual property.

The ET Plus System is now the most crash-tested guardrail end-terminal system available. It has been crash-tested more times than any highway roadside product of its type. Devices like the ET Plus are designed to address an identified highway safety need while meeting applicable regulatory standards. Throughout the testing process, the ET Plus unequivocally demonstrated satisfactory performance in compliance with applicable crash-testing criteria. Professional engineers at the FHWA and an independent engineering expert retained by FHWA both determined that the ET Plus passed all crash-testing and has met all Federal safety standards.

## **Highway Safety – A Social Responsibility**

In the 1950s, the U.S. government began developing the highway infrastructure we now know as the National Highway System (NHS). In conjunction with this activity, the American Association of State Highway and Transportation Officials (AASHTO), an association composed of member state highway departments and their respective officials, and other public safety advocates began to focus on roadside safety hardware. Following the formation of the FHWA, the Transportation Research Board (TRB) and AASHTO engaged with the FHWA to advance roadway safety through multiple projects and programs that came to be known as the National Cooperative Highway Research Program (NCHRP).

Under the NCHRP, full-scale impact testing was determined to be the most dependable method of evaluating the safety performance of roadside safety hardware, which includes highway guardrails. Procedures for full-scale vehicle crash-testing of guardrails were first published in 1962, and they have been periodically updated in response to changing roadway conditions and vehicle designs.

The TRB, FHWA, and AASHTO have been diligently working together to improve road safety in multiple areas, including their efforts at evaluating the performance of highway safety devices by the application of increasingly complex crash-testing standards. The collective efforts focused on guardrail and end-terminal safety features, however successful, cannot prevent 100 percent of all injuries in all vehicle accidents. The FHWA recently stated:

[I]t is important to provide some context of what guardrails are intended to do, as well as an overall picture of Federal Highway's safety strategy regarding the ET Plus. A guardrail is a safety barrier. It's intended to mitigate the consequences of a crash for a motorist who has left the roadway. A guardrail can operate to deflect a vehicle back to the roadway, slow the vehicle down to a complete stop, or, in certain circumstances, slow the vehicle down and let it proceed past the guardrail. Guardrails help make roads safer and lessen the severity of crashes. For most drivers and most conditions, guardrails work as intended. That said, unfortunately and sometimes tragically, guardrails cannot completely protect drivers in every situation. Factors like the size, speed, and orientation of a vehicle and the condition of the guardrail prior to impact can affect guardrail performance.

## **Trinity and Texas A&M University**

In the early 1900s, the Texas Highway Department (THD) started utilizing laboratory facilities located at Texas A&M University to conduct transportation research projects. In turn, Texas A&M University created the Texas A&M Transportation Institute (TTI) to participate in the development of safe transportation technologies and products.

In the early 1970s, Trinity Industries, Inc. (Trinity) entered the highway guardrail manufacturing business, establishing a market leadership position by the early 1980s. In 1992, Trinity acquired Syro Steel Company (Syro). At that time, Syro had obtained an exclusive licensing arrangement for TTI-patented roadside safety feature design technology. This acquisition connected TTI, an institution with an international reputation for excellence in transportation safety research and product development, with Trinity Highway, a leading manufacturer of highway guardrail products. The efforts over the years of TTI and Trinity Highway have resulted in the development of an array of market-leading highway safety features designed to help make roads safer and lessen the severity of crashes.

In the two decades of this relationship, the highway product models introduced by TTI and Trinity Highway have represented the “state of the possible” in terms of evolving roadway and vehicle designs. TTI and Trinity Highway have also been very active in designing, testing, and manufacturing the next generation of highway safety hardware.

Under the NCHRP, the development of roadside safety feature crash-testing has continually evolved. The latest testing standards were published in 2009 by AASHTO in its “Manual for Assessing Safety Hardware” (MASH). In this manual, AASHTO set out revised crash-test criteria established to examine the performance of roadside safety features when impacted by current-model vehicles. As of January 1, 2011, all new roadside safety products to be used on the NHS must be tested using MASH crash-test criteria. The ET Plus and other roadside safety hardware accepted under crash-test criteria published in NCHRP Report 350 may remain in use on the NHS and may still be purchased for new installations for the replacement of damaged hardware. Since 2012, the states have continued to purchase products accepted under NCHRP Report 350 standards. It is important to note that in 2011, TTI and Trinity Highway introduced an end-terminal product that successfully passed MASH crash-testing criteria and received an acceptance and Federal-aid eligibility letter from the FHWA. At this time, it is our understanding that this product is the only FHWA-accepted and Federal-aid eligible end-terminal product that has passed MASH crash-testing criteria.

## **Adversary’s Business Plan**

A number of people stand to gain substantially from the demise of the ET Plus as a product and from the destruction of TTI’s and Trinity Highway’s commercial reputations. These adversaries, including those who compete with Trinity Highway, have contrived a series of myths about the ET Plus, TTI and Trinity Highway, and the FHWA. It appears to us that their plan is to profit personally by using anticompetitive tactics and practices in perpetrating these myths. Since starting their attacks on the ET Plus, the price for competing products has drastically increased.

TTI and Trinity Highway, on the other hand, supported by independent evaluations and assessments made by the FHWA, have established a strong foundation built on facts and supported by scientific methods. As we continue to make progress, our adversaries persist in fabricating fiction after fiction to discredit that progress. Using broad, misleading statements rather than facts and data supported by

scientific methods, these adversaries perpetuate false information and misunderstandings about the performance of the ET Plus. In simple terms, our adversaries' objectives are to perpetuate fears and suspicions about the ET Plus to obtain personal economic reward.

Since 2012, TTI and Trinity Highway have been the targets of this malicious and unsubstantiated attack on their honesty, integrity, ethical principles, and commercial motives pertaining to the ET Plus. These attacks are fabricated based on an alleged "deception" resulting from the inadvertent omission of a one-page drawing of a slightly modified ET Plus from the 90-plus-page crash-test report prepared by the research engineers at TTI and submitted to the FHWA for review. The omission was simply the unintentional administrative error of a TTI clerk in preparation of the final report package, which error a TTI research engineer admitted to under oath. The FHWA has thoroughly reviewed the modifications and has repeatedly confirmed that the ET Plus is crashworthy and meets Federal safety criteria.

During the past year, even as we presented the facts and data supporting our position, our adversaries continued to promote their falsehoods and misrepresentations, including the following:

- (1) Trinity Highway produced multiple versions of the ET Plus.
- (2) The test articles do not represent what is actually installed on the NHS, and because of that the FHWA-requested crash-tests that were completed in December 2014 and January 2015 were shams.
- (3) The FHWA and Trinity Highway conspired to ensure that the tests were deemed a "pass."
- (4) The testing facility was not independent but was part of the overall subterfuge to reach a predetermined "passing" report for all eight tests.
- (5) Trinity Highway actually selected the test articles it wanted to test from the California Department of Transportation's inventory.

These allegations are not true. The test articles were selected by FHWA representatives from existing inventory at the California Department of Transportation. The selection of an independent, FHWA-certified testing facility had to be further approved by the FHWA as part of the testing plan. On March 11, 2015, the FHWA and AASHTO released the results of their study, which examined the dimensions of 1,048 ET Plus heads in five states throughout the country. The study concluded:

There is no evidence to suggest there are multiple versions...on our nation's roadways. The end terminals crash tested...between December 2014 and January 2015 are representative of the devices installed across the country.... The data and the conclusions of this task force clearly indicate that the devices recently tested are representative of the ET-Plus devices on the nation's roadways.

Our adversaries' unsupported claims are simply not true. In the future, we expect our adversaries will continue to employ tactics calculated to further discredit the ET Plus.

### **Closing Remarks**

I appreciate your taking the time to read this letter. We believe it is important for our stakeholders to know the facts. I reiterate that it is extremely important to Trinity and Trinity Highway that all of our nation's roadways are safe for motorists.

Trinity Industries, Inc. is a diversified industrial company that owns market-leading businesses providing products and services to the energy, transportation, chemical, and construction sectors. Trinity's businesses provide industrial products and services ranging from barges, storage and distribution containers, aggregates, and highway products to wind tower and utility structures, railcars, railcar parts, and railcar leasing, management, and maintenance services. Our businesses play an important role in the overall economy by supplying essential infrastructure-related products and services.

Our vision is to be a premier, diversified industrial company that owns market-leading businesses that provide superior products and services to customers while generating high-quality earnings and returns for shareholders. We expect to accomplish this through

- the skills, talents, and integrity of our people;
- the strength of our market-leading positions;
- the depth of our operational capabilities; and
- our commitment to excellence and continuous improvement.

Trinity is an 80-year-old company that has developed an eminent position in the industries it serves. It has been, is today, and will remain a trusted and ethical manufacturer of quality products.



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