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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Trinity Industries Settles Guardrail Suit On Eve Of Trial

By **Cara Bayles**

Law360, Dallas (May 16, 2017, 10:03 PM EDT) -- [Trinity Industries Inc.](#) told a Dallas County judge Monday it had settled a product liability case over its allegedly defective guardrails the day before trial was set to begin in the suit brought by a North Carolina man who lost both his legs in a highway accident.

Jay Scott Traylor had alleged Trinity's negligence caused a guardrail on I-40 in North Carolina to pierce through the driver's side floor, severing his legs. Had the guardrail met the design specifications it had won federal approval for, it would have absorbed the impact of Traylor's car, the February 2014 complaint alleges. The suit sought compensatory damages for Traylor's medical care, lost wages, injuries and mental anguish, as well as punitive damages and pre- and post-trial judgment interest.

Details of the settlement weren't available Tuesday. An attorney for Traylor declined to comment on the settlement, and attorneys for Trinity could not immediately be reached for comment. The letter to Dallas County District Judge Eric Moyer called the deal "a confidential settlement agreement" and promised to file a motion to dismiss soon.

"We sincerely appreciate the court's time and attention to this matter," said the letter from Trinity attorney Jeffrey Tillotson of Tillotson Law. "Both sides wish to thank the court's staff for their tremendous cooperation and hard work on this case."

Traylor's suit alleged the North Carolina Department of Transportation had approved Trinity's ET-Plus guardrail, but that at some point between 2000 and 2005, the company altered its design without seeking new approval. The new head at the end of the rail featured an exit gap that was only one inch wide, not the 1.5 inches that had been tested and approved by the federal government, according to the complaint. The chute to the head was also reduced, from five feet to four, and the rails were inserted into the heads, rather than being welded flush. While Trinity asked the Federal Highway Administration to approve other changes, it never sought approval for those alterations in its designs.

The Dallas-based company has faced its share of litigation over its guardrails. In 2015, U.S. District Judge Rodney Gilstrap tripled a \$175 million **False Claims Act verdict** against the company and assessed more than \$138 million in penalties. The \$663 million judgment followed a jury's verdict finding the company had defrauded the U.S. government by changing the design of the guardrails without getting approval from the Federal Highway Administration, then misrepresenting them as the earlier, approved version even though they were more dangerous.

That whistleblower action is now **pending** before the Fifth Circuit, with the company arguing the U.S. Supreme Court's recent Escobar decision — which **carves out a new standard** for evaluating whether regulatory violations are serious enough to trigger FCA liability — meant the company could seek a new trial.

Traylor is represented by Ryan MacLeod and Jason Itkin of Arnold & Itkin LLP, Lisa Blue of Baron & Blue, Dean Gresham of Steckler Gresham Cochran, Steven R. Lawrence of the Lawrence Law Firm and Robert J. Binstock of Reich & Binstock LLP.

Trinity is represented by Jeffrey Tillotson of Tillotson Law, Rebekah Ricketts of Gibson Dunn & Crutcher LLP, Russell C. Brown of Russell C. Brown PC, Jose Luzarraga of Butler Snow, Marty L. Brimmage Jr., Lacy M. Lawrence, Andrew Newman and Brennan H. Meier of Akin Gump Strauss Hauer & Feld LLP and Adam L. Hoeflich, John C. Fitzpatrick, Sean W. Gallagher, Asha L.I. Spencer of Bartlit Beck Herman Palenchar & Scott LLP.

The case is Jay Scott Traylor v. Trinity Industries Inc. et al., case number DC-14-01965, in the 14th District Court for Dallas County.

--Additional reporting by Linda Chiem and Adrienne Reilly. Editing by Bruce Goldman.

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