

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

JACKSON COUNTY, MISSOURI,	)	
individually and on behalf of a class of	)	
others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.: _____
	)	
TRINITY INDUSTRIES, INC., and	)	
TRINITY HIGHWAY PRODUCTS, LLC,	)	
	)	
Defendants.	)	

**CLASS ACTION PETITION (TI)**

Plaintiff, Jackson County, Missouri (“Plaintiff” or “Jackson County”), for its Petition against Defendants Trinity Industries, Inc. (“Trinity Industries”), and Trinity Highway Products, LLC (“Trinity Highway,” and collectively with Trinity Industries “Defendants” or “Trinity”), states and alleges as follows:

**INTRODUCTION**

1. This action seeks to redress harm to: Jackson County, Missouri; all Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis; and the State of Missouri’s transportation authority (collectively “Class Members”), caused by Trinity’s design, manufacture, and sale of defective, unsafe, and unreasonably dangerous “modified ET-Plus” guardrail end terminals (as defined below).

2. “Modified ET-Plus” end terminals have been installed on roadways owned and maintained by Jackson County and the Class Members throughout the State of Missouri.

3. Because Jackson County and the Class Members own and maintain the roadways within their jurisdictions, they have a duty to make those roadways reasonably safe for public use.

4. The “modified ET-Plus” guardrail end terminal installed on roadways in Jackson County and throughout the State of Missouri is depicted in the below photographs.



### **PARTIES**

5. Jackson County, Missouri, is a body corporate and politic for the purposes of bringing or defending suit, and operates its affairs from its principal place of business located at 415 E. 12<sup>th</sup> Street, Kansas City, Missouri 64105.

6. Trinity Industries, Inc., is a Delaware corporation with a principal place of business located at 2525 Stemmons Freeway, Dallas, Texas 75207, and can be served with process through its registered agent CT Corp. System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Trinity Industries owns and controls 100% of Trinity Highway Products, LLC. Trinity Industries actively participates in decision making for and control of the design, manufacture, and sale of guardrail end terminals like the “modified ET-Plus”, as well as other roadway safety devices and products.

7. Trinity Highway Products, LLC, is a Delaware limited liability company with a principal place of business located at 2525 Stemmons Freeway, Dallas, Texas 75207, and can be served with process through its registered agent CT Corp. System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Trinity Highway actively participates in decision making for and

control of the design, manufacture, and sale of guardrail end terminals including the “modified ET-Plus”, as well as other roadway safety devices and products.

8. Trinity Industries and Trinity Highway are one in the same, or alternatively Trinity Highway is the alter-ego of Trinity Industries, in that on information and belief:

- a. They share common ownership, officers, and directors;
- b. They share the same principal place of business;
- c. They use the same full time, part-time, and temporary employees in the conduct of their business;
- d. They have commingled cash resources and financial operations; and
- e. In further particulars currently unknown to Plaintiff, but which Plaintiff verily believes will be disclosed through the use of proper discovery procedures during the course of this litigation.

9. At no time did Jackson County or the Class Members contract with Trinity for the purchase, installation, or maintenance of the “modified ET-Plus.” Thus, the duties imposed on Trinity, as alleged herein, do not arise under contract.

### **JURISDICTION AND VENUE**

10. This Court has personal jurisdiction over Defendants pursuant to § 506.500 R.S.Mo. in that Defendants transact business and have committed tortious acts within the State of Missouri.

11. Venue is proper in this Court pursuant to § 508.010 R.S.Mo., because Plaintiff was first injured in Jackson County, Missouri.

12. The amount in controversy, taken solely in the limited context of evaluating federal diversity jurisdiction under 28 U.S.C.A. § 1332(a), does not exceed the sum or value of \$75,000, exclusive of interest and costs. Thus, there is no federal diversity jurisdiction pursuant to 28 U.S.C.A. § 1332(a).

13. The number of proposed Class Members in the aggregate is less than 100, and thus there is no federal diversity jurisdiction pursuant to 28 U.S.C.A. § 1332(d).

14. In addition, there is no federal question jurisdiction pursuant to 28 U.S.C.A. § 1331 in that Plaintiff's claims assert no federal question or federal statute violation, and therefore do not arise under federal law.

### **FACTS COMMON TO ALL COUNTS**

#### ***The Design and Reasonably Anticipated Use of Guardrail End Terminals***

15. Guardrails and guardrail end terminals are different devices, and are purchased separately from each other.

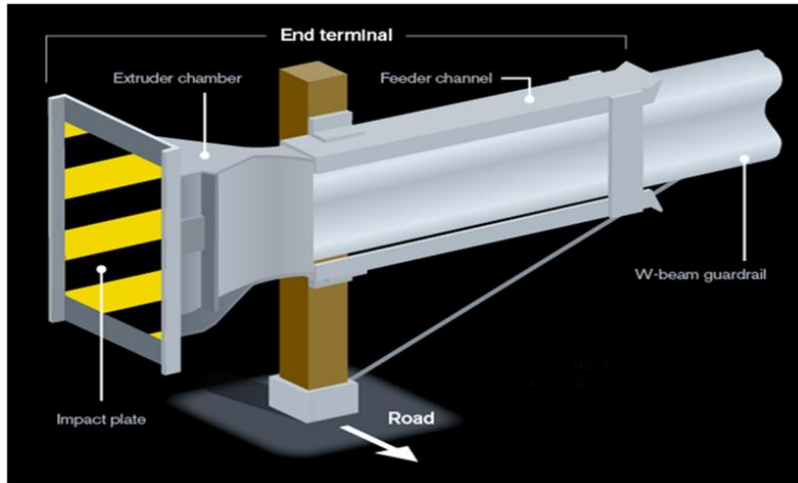
16. Guardrails are safety barriers intended to shield a motorist who has left the roadway.

17. Guardrail end terminals are separate devices that are attached to guardrails to prevent or reduce the risk of injury or death to vehicle occupants and others in the event a vehicle collides with the end of the guardrail.

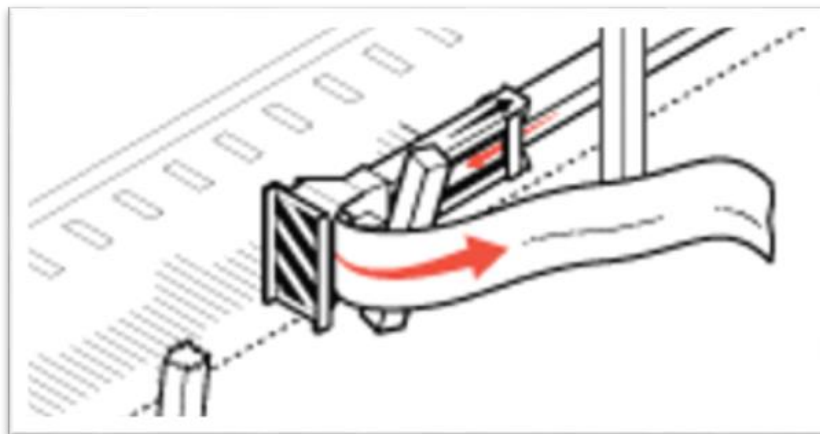
18. In the event of a vehicle collision, the intended purpose of guardrail end terminals is to absorb the kinetic energy generated upon vehicular impact, while preventing spearing, piercing, vaulting, rollovers, and other unintended redirection of the vehicle.

19. Guardrail end terminals decrease the force and severity of vehicle collisions by allowing the guardrail to extrude through the head of the end terminal and flatten out into a ribbon, thereby improving motorist and passenger safety, and thus reducing the risk of serious injury or death to a vehicle's occupants and others.

20. The “modified ET-Plus” is an end terminal mounted on guardrails and commonly seen on Missouri’s roadways, that consists of three relevant components: (a) an impact plate; (b) an extruder chamber; and (c) a feeder channel or feeder chute.



21. As illustrated below, when a vehicle collides with a “modified ET-Plus,” the following should occur: (a) the impact causes the guardrail to pass through the feeder channel or chute; (b) the guardrail then enters the extruder chamber through the extruder throat; (c) the guardrail passes through the extruder chamber where it is flattened; (d) the flattened guardrail then exits the extruder chamber through the exit gap; and (e) as it exits the extruder chamber, the flattened guardrail contacts a deflector that causes the extruded guardrail to ribbon and curl away from the vehicle and the roadway.





22. Because a “modified ET-Plus’s” proper function requires that the guardrail pass through the end terminal, the dimensions of the end terminal components are critical. Even the slightest change to the end terminal can negatively impact the end terminal’s ability to function properly and safely for its reasonably anticipated use.

***Trinity Did Not Disclose Design Changes to the Original ET-Plus***

23. In 1989, Trinity began manufacturing, marketing, and selling a guardrail end terminal system called the ET-2000. Prior to doing so, Trinity sought a determination that the ET-2000 was eligible for federal funding from the Federal Highway Administration (“FHWA”). Ultimately, the FHWA determined the ET-2000 was eligible for federal funds.

24. After manufacturing, marketing, and selling the ET-2000 through the 1990’s, Trinity redesigned the ET-2000 and rebranded it under the name “ET-Plus.” As it did with the ET-2000, before Trinity manufactured, marketed, and sold the ET-Plus guardrail end terminal, Trinity submitted the ET-Plus to the FHWA for the purpose of obtaining a determination that the device was eligible for federal funding. In January 2000, the FHWA deemed the ET-Plus eligible for federal funds (the “original ET-Plus”).

25. After manufacturing, marketing, and selling the original ET-Plus, Trinity embarked upon changes to its design in the early 2000’s. Sometime before December 31, 2005, in an effort

to save money, Trinity redesigned the original ET-Plus and modified certain of its critical dimensions (the “modified ET-Plus”).

26. Trinity made this change with no announcement, and neither sought nor received an FHWA eligibility determination of the modified ET-Plus. Trinity also chose not to disclose these modifications to other governmental entities, such as state, county, and municipal transportation authorities. These modifications remained a secret.

27. Trinity subsequently manufactured and sold the modified ET-Plus. The modified ET-Plus devices sold by Trinity contained some or all of the critical dimensional changes detailed herein. Trinity gave no notice or other indications to the marketplace that the critical dimensions of the modified ET-Plus were different than those of the original ET-Plus design, as detailed herein. Instead Trinity actively concealed these changes.

***The Dimensions of the Original ET-Plus***

28. The original ET-Plus had the following design dimensions:

<b>Original ET-Plus</b>	
<b>Component</b>	<b>Dimension/Design</b>
Exit Gap Width	1.3 to 1.5 inches
Feeder Chute Width	5 inches
Feeder Chute Assembly Height	
a. Exterior	15 3/8 inches
b. Interior	15 inches
Feeder Chute Assembly Length	37 inches
Feeder Rails	Welded Flush to the Extruder Throat

***The Dimensions of the Modified ET-Plus***

29. Trinity modified the dimensions of the original ET-Plus as follows:
- Trinity narrowed the exit gap width from the approved 1.3 – 1.5 inches, to 1.0 inch;
  - Trinity narrowed the width of the feeder chute from the approved 5 inches, to 4 inches;
  - Trinity reduced the exterior dimensions of the feeder chute assembly height from the approved 15 3/8 inches to 14 7/8 inches;
  - Trinity reduced the internal dimensions of the feeder chute assembly height from the approved 15 inches to 14 1/2 inches;
  - Trinity shortened the feeder chute assembly length from the approved 37 inches to 36 1/4 inches; and
  - Trinity inserted the feeder rails 0.75 inches into the extruder throat, as opposed to welding them flush to the extruder throat.

30. As a result of Trinity's modifications to its design, the modified ET-Plus has some or all of the following critical dimensions, which are substantially different than the dimensions of the original ET-Plus:

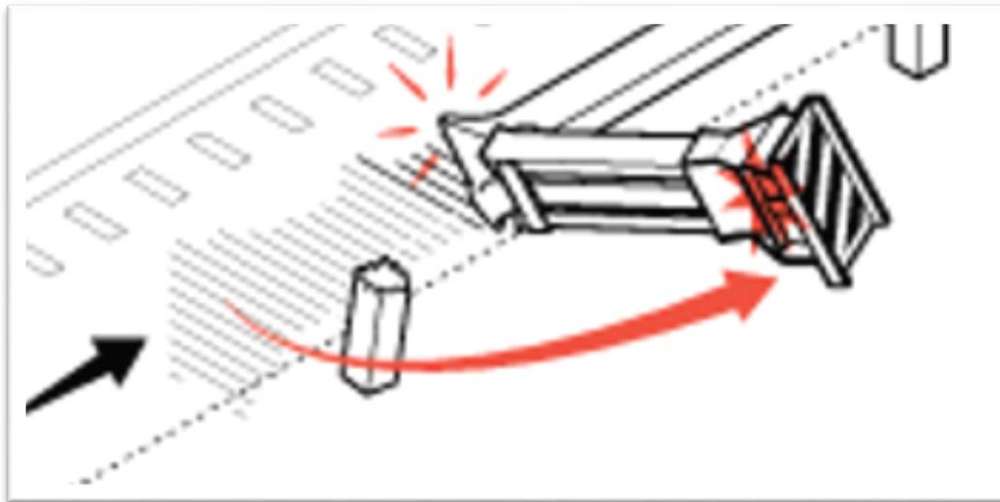
<b>Modified ET-Plus</b>	
<b>Component</b>	<b>Dimension/Design</b>
Exit Gap	1.0 inch
Feeder Chute Width	4 inches
Feeder Chute Assembly Height	
a. Exterior	14 7/8 inches
b. Interior	14 1/2 inches
Feeder Chute Assembly Length	36 1/4 inches
Feeder Rails	Inserted 0.75 inches into the Extruder Throat



***The Modified ET-Plus is Defective, Not Reasonably Safe, and Unreasonably Dangerous When Put to Its Reasonably Anticipated Use***

31. The significant reduction in the modified ET-Plus's internal clearances resulting from Trinity's modifications cause the device to "throat lock," a malfunction in which the guardrail binds or "locks up" as it passes through the terminal head, which prevents proper extrusion and deflection.

32. As illustrated below, the defective design of the modified ET-Plus prevents the guardrail from passing through the terminal head as intended. As a result, the modified ET-Plus does not absorb the impact of a collision, or deflect the guardrail. Instead of ribboning away from the vehicle, the guardrail spears or pierces the vehicle, or causes the vehicle to vault, rollover, or redirect in other unintended ways, thus resulting in serious injury or death to vehicle occupants and others.





33. As a result of Trinity's design changes to the original ET-Plus, the modified ET-Plus is defective, unsafe, and unreasonably dangerous when put to its reasonably anticipated use. Malfunctions of the modified ET-Plus have caused serious injury and death on numerous occasions across the country, including within the State of Missouri.

34. The modified ET-Plus is an inherently dangerous product that poses an increased risk of serious injury or death to vehicle occupants and others on roadways across the country and, specifically, within the State of Missouri. As a result of this increased risk, the modified ET-Plus has damaged other property, including without limitation roadways and guardrails throughout Jackson County and the State of Missouri.

35. Roadways and guardrails throughout Jackson County and the State of Missouri are damaged in that, due to the defects in the modified ET-Plus, the guardrails and roadways themselves pose an increased risk of causing serious bodily harm.

36. As a result of the defective, unsafe, and unreasonably dangerous condition of the modified ET-Plus, Jackson County and the Class Members have already removed and replaced some modified ET-Plus devices from roadways they maintain and must continue to remove and replace every modified ET-Plus that was installed on those roadways.

***Trinity Knew of the Design Defect but Continued to Manufacture and Sell the Modified ET-Plus***

37. Prior to 2012, Trinity did not disclose any of the modifications to the critical dimensions of the original ET-Plus, as detailed above.

38. In 2012, Trinity and its agents admitted to the FHWA that Trinity modified the dimensions of the original ET-Plus's feeder chute to a width of 4 inches from the original 5 inch width dimension. Trinity led the FHWA and others to believe that this was the only modification Trinity made to the critical dimensions of the original ET-Plus. But this was untrue. As detailed above, Trinity previously made other modifications to the original ET-Plus's critical dimensions, which it chose not to disclose to the FHWA and others, including state, county, and municipal transportation authorities.

39. Trinity also chose not to disclose to the FHWA and others, including state, county, and municipal transportation authorities, that the modified ET-Plus had failed multiple performance tests.

40. Trinity, therefore, manufactured and sold the modified ET-Plus knowing its design was defective, not reasonably safe, and unreasonably dangerous when put to its reasonably anticipated use.

## CLASS ACTION ALLEGATIONS

41. Pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure, Jackson County brings this class action on behalf of itself and the following class of others similarly situated: all Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis; and the State of Missouri's transportation authority (the "Class").

42. Excluded from the Class are Defendants, including any parent, subsidiary, affiliate, or control persons of Defendants; Defendants' officers, directors, agents, or employees; and the judicial officers assigned to this litigation, and members of their staffs and immediate families.

43. The proposed Class meets all requirements for class certification.

44. The Class satisfies the numerosity requirement in that the Class consists of more than 40, but fewer than 100 members, all of whom are geographically dispersed throughout the State of Missouri, such that joinder of all Class Members in a single action is impracticable.

45. There are questions of fact and law common to the Class which predominate over any questions affecting only individual Class Members. The questions of fact and law common to the Class arising from Defendants' actions include, without limitation:

- a. Whether Trinity designed the modified ET-Plus or, said differently, modified the critical design dimensions of the original ET-Plus;
- b. Whether Trinity manufactured the modified ET-Plus;
- c. Whether the modified ET-Plus was defectively designed;
- d. Whether the modified ET-Plus was defectively manufactured;
- e. Whether the modified ET-Plus is reasonably safe;
- f. Whether Trinity failed to use ordinary care to design the modified ET-Plus to be reasonably safe;

- g. Whether Trinity failed to use ordinary care to manufacture the modified ET-Plus to be reasonably safe;
- h. Whether Trinity placed the modified ET-Plus into the market in an unreasonably safe condition;
- i. Whether Trinity placed the modified ET-Plus into the market without adequate testing to determine if it operates in a reasonably safe manner;
- j. Whether the modified ET-Plus poses a substantial risk of harm to the general public;
- k. Whether, in the course of its business, Trinity sold the modified ET-Plus;
- l. Whether the modified ET-Plus was in a defective condition unreasonably dangerous when put to its reasonably anticipated use at the time Trinity sold it;
- m. Whether Jackson County and Class Members used the modified ET-Plus in a manner reasonably anticipated;
- n. Whether Trinity knew at the time it sold the modified ET-Plus that the modified ET-Plus was defective, unsafe, and in an unreasonably dangerous condition;
- o. Whether Trinity supplied the modified ET-Plus for use;
- p. Whether the modified ET-Plus was dangerous when put to a reasonably expected use;
- q. Whether Trinity knew, or in the exercise of ordinary care could have known, that the modified ET-Plus was defective and in a dangerous condition;
- r. Whether Trinity failed to exercise ordinary care to make the modified ET-Pus reasonably safe; and
- s. Whether Jackson County and Class Members have been damaged by Trinity's misconduct.

46. The questions set forth above predominate over any questions affecting only individual Class Members, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy, because:

- a. Separate adjudication of claims by individual Class Members could lead to inconsistent results, which would establish incompatible standards of conduct for Trinity;

- b. Separate actions by individual Class Members could impair the ability of other Class Members to adequately protect their interests;
- c. The financial burden on individual Class Members could make it impracticable for them to pursue their claims against Trinity individually; and
- d. Judicial economy would be served by the maintenance of this action as a class action to avoid numerous individual lawsuits filed by Class Members.

47. No unusual difficulties are anticipated in the management of this case as a class action.

48. The claims asserted by Jackson County are typical of the claims of each of the other Class Members because Missouri law applies to all claims asserted by the class, and all Class Members were similarly injured through the substantially uniform misconduct described above. The same action or inaction by Trinity giving rise to the causes of action asserted by Jackson County in this Petition are the same acts giving rise to all Class Members' rights of redress. Trinity holds no defense that is unique against Jackson County relative to the Class.

49. Jackson County is an adequate representative of the proposed Class because its interests do not conflict with the interests of other Class Members it seeks to represent; it has retained counsel competent and experienced in complex product liability and class action litigation; and Jackson County and its counsel will prosecute this action vigorously. The Class interest will be fairly and adequately protected by Jackson County and its counsel.

50. The action is maintainable as a class action because Trinity has acted on grounds generally applicable to the Class, thereby making final monetary, equitable, and declaratory relief appropriate to the Class as a whole.

## CAUSES OF ACTION

### COUNT I

#### Product Liability - Negligence

51. Jackson County incorporates and restates all preceding paragraphs of the Petition as though fully set forth herein.

52. At all relevant times alleged herein, Trinity designed, manufactured, and sold or supplied the modified ET-Plus.

53. Trinity's modified ET-Plus is defective and poses a safety hazard to the occupants of vehicles and others on public roadways across the country and, specifically, within the State of Missouri.

54. At all relevant times alleged herein, Trinity had a duty to exercise ordinary care in designing, manufacturing, and selling or supplying the modified ET-Plus so as to be reasonably safe and not to injure Jackson County and the Class Members, or vehicle occupants and others on roadways throughout the State of Missouri.

55. At all relevant times alleged herein, Trinity disregarded and breached its duty through, without limitation, one or more of the following acts or omissions:

- a. Failing to design the modified ET-Plus to be reasonably safe;
- b. Failing to manufacture the modified ET-Plus to be reasonably safe;
- c. Placing the modified ET-Plus into the market in an unreasonably safe condition;
- d. Placing the modified ET-Plus into the market without adequate testing to determine whether it operates in a reasonably safe manner; and
- e. In further particulars currently unknown to Plaintiff, but which Plaintiff verily believes will be disclosed through the use of proper discovery procedures during the course of this litigation.

56. As a direct and proximate result of one or more of Trinity's foregoing acts or omissions, a defective and not reasonably safe device, the modified ET-Plus, has been installed on

roadways that Jackson County and the Class Members own and maintain throughout the State of Missouri.

57. As a direct and proximate result of one or more of Trinity's foregoing acts or omissions, Jackson County and the Class Members have been damaged in that they have already removed and replaced some of the modified ET-Plus devices from roadways that they own and maintain and must continue to remove and replace all modified ET-Plus devices installed on the roadways they own and maintain throughout the State of Missouri.

58. As a direct and proximate result of one or more of Trinity's foregoing acts or omissions, the defective and not reasonably safe modified ET-Plus damages other property, including without limitation roadways and guardrails, and poses a substantial risk of harm to the general public.

**WHEREFORE**, Jackson County and the Class Members pray for judgment on Count I against Trinity for compensatory damages in such sums as are fair and reasonable in excess of \$25,000, together with all pre and post judgment interest at the maximum rate allowed by law, along with their costs incurred herein, including, but not limited to, their reasonable attorneys' fees, as permitted by law.

**COUNT II**  
**Product Liability – Strict Liability**

59. Jackson County incorporates and restates all preceding paragraphs of the Petition as though fully set forth herein.

60. At all relevant times alleged herein, Trinity sold the modified ET-Plus in the course of Trinity's business.

61. At the time Trinity sold the modified ET-Plus, the modified ET-Plus was in a defective condition unreasonably dangerous when put to its reasonably anticipated use.



62. Plaintiff and Class Members used the modified ET-Plus in a manner reasonably anticipated.

63. As a direct and proximate result of the defective and unreasonably dangerous condition as existed when the modified ET-Plus was sold, Jackson County and the Class Members have been damaged in that they have already removed and replaced some of the modified ET-Plus devices from roadways that they own and maintain and must continue to remove and replace all modified ET-Plus devices installed on the roadways they own and maintain throughout the State of Missouri.

64. As a direct and proximate result of the defective and unreasonably dangerous condition as existed when the modified ET-Plus was sold, the modified ET-Plus damages other property, including without limitation roadways and guardrails, and poses a substantial risk of harm to the general public.

**WHEREFORE**, Jackson County and the Class Members pray for judgment on Count II against Trinity for compensatory damages in such sums as are fair and reasonable in excess of \$25,000, together with all pre and post judgment interest at the maximum rate allowed by law, along with their costs incurred herein, including, but not limited to, their reasonable attorneys' fees, as permitted by law.

**COUNT III**  
**Negligently Supplying Dangerous Instrumentality for Supplier's Business Purposes**

65. Jackson County incorporates and restates all preceding paragraphs of the Petition as though fully set forth herein.

66. At all relevant times alleged herein, Trinity supplied the modified ET-Plus for use.

67. At all relevant times alleged herein, the modified ET-Plus was defective and was therefore dangerous when put to a reasonably expected use.

68. At all relevant times alleged herein, Plaintiff and Class Members put the modified ET-Plus to a reasonably expected use.

69. At all relevant times alleged herein, Trinity knew or in the exercise of ordinary care could have known that the modified ET-Plus was defective and in a dangerous condition.

70. At all relevant times alleged herein, Trinity had a duty to exercise ordinary care to ensure the modified ET-Plus was reasonably safe when put to a reasonably expected use.

71. At all relevant times alleged herein, Trinity failed to exercise ordinary care to make the modified ET-Plus reasonably safe.

72. As a direct and proximate result of Trinity's failure to exercise ordinary care to make the modified ET-Plus reasonably safe, Jackson County and the Class Members have been damaged in that they have already removed and replaced some of the modified ET-Plus devices from roadways that they own and maintain and must continue to remove and replace all modified ET-Plus devices installed on the roadways that they own and maintain throughout the State of Missouri.

73. As a direct and proximate result of Trinity's failure to exercise ordinary care to make the modified ET-Plus reasonably safe, the modified ET-Plus damages other property, including without limitation roadways and guardrails, and poses a substantial risk of harm to the general public.

**WHEREFORE**, Jackson County and the Class Members pray for judgment on Count III against Trinity for compensatory damages in such sums as are fair and reasonable in excess of \$25,000, together with all pre and post judgment interest at the maximum rate allowed by law, along with their costs incurred herein, including, but not limited to, their reasonable attorneys' fees, as permitted by law.

**COUNT IV**  
**(In the Alternative)**  
**Declaratory Judgment**

74. Jackson County incorporates and restates all preceding paragraphs of the Petition as though fully set forth herein.

75. As a direct and proximate result of Trinity's conduct, the modified ET-Plus has been installed on roadways that Jackson County and the Class Members own and maintain throughout the State of Missouri.

76. Because the modified ET-Plus is defective, not reasonably safe, and unreasonably dangerous, the modified ET-Plus must be removed and replaced.

77. Jackson County and the Class Members are entitled to a declaration that Trinity's acts and omissions detailed above constitute violations of applicable state law, and request declaratory relief in the form of this Court's order declaring Trinity's conduct to be unlawful under Missouri law, and requiring Trinity to compensate Jackson County and the Class Members in the manner prayed for herein.

**WHEREFORE**, in the alternative to their above stated claims, Jackson County and the Class Members pray for a judgment against Trinity, declaring that:

- a. The modified ET-Plus is defective, not reasonably safe, and unreasonably dangerous;
- b. Trinity's conduct, as alleged herein, is unlawful under Missouri law;
- c. Jackson County and the Class Members shall be compensated by Trinity for their costs and expenses associated with removing and replacing the modified ET-Plus devices on their roadways throughout the State of Missouri; and
- d. Jackson County and the Class Members shall be awarded their costs incurred in bringing and prosecuting this action, including their reasonable attorneys' fees, as permitted by law.

**DEMAND FOR JURY TRIAL**

Trial by jury is demanded on all issues so triable.

DATED this 5<sup>th</sup> day of November, 2015.

Respectfully submitted,

**MILLER SCHIRGER, LLC**

/s/ John J. Schirger

John J. Schirger      MO Bar #60583  
Matthew W. Lytle      MO Bar #59145  
4520 Main Street, Suite 1570  
Kansas City, Missouri 64111  
Telephone:      816-561-6500  
Facsimile:      816-561-6501  
E-mail:      jschirger@millerschirger.com  
E-mail:      mlytle@millerschirger.com

- AND -

**WAGSTAFF & CARTMELL LLP**

Tom Wagstaff, Jr.      MO Bar #50237  
Jack T. Hyde      MO Bar #63903  
Mallory Vandyke      MO Bar #66110  
4740 Grand Avenue, Suite 300  
Kansas City, Missouri 64112  
Telephone:      (816) 701-1100  
Facsimile:      (816) 531-2372  
E-mail:      t.l.wagstaff@wcllp.com  
E-mail:      jhyde@wcllp.com  
E-mail:      mvandyke@wcllp.com

ATTORNEYS FOR PLAINTIFF