

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

COMMONWEALTH OF VIRGINIA,	)	
<i>Ex. rel.</i>	)	
JOSHUA M. HARMAN	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CL13-698
	)	
TRINITY INDUSTRIES INC., and	)	
TRINITY HIGHWAY PRODUCTS, LLC	)	
	)	
Defendants.	)	

**THE COMMONWEALTH OF VIRGINIA’S COMPLAINT-IN-INTERVENTION**

The Commonwealth of Virginia (“the Commonwealth”) hereby intervenes in this action under the Virginia Fraud Against Taxpayers Act (Va. Code §§ 8.01-216.1 *et seq.*) against Defendants Trinity Industries, Inc. (“Trinity Industries”) and Trinity Highway Products, LLC (“Trinity Highway”) (collectively “Trinity”).

**Nature of the Case**

1. This *qui tam* action is brought pursuant to the Virginia Fraud Against Taxpayers Act, Va. Code §8.01-216.1 through § 8.01-216.19 (“VFATA”).

2. The VFATA provides in pertinent part:

A. Any person who:

1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
2. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

....

shall be liable to the Commonwealth for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the Commonwealth.

Va. Code § 8.01-216.3. Section 8.01-216.5 allows for private individuals to “bring a civil action for a violation of §8.01-216.3 for the person and for the Commonwealth.” This action is an effort to restore to the Commonwealth losses suffered due to Trinity's false claims, caused false claims and materially fraudulent misrepresentations in connection with the sale of products used on the highways in Virginia, guard rail end terminals.

### **Parties, Jurisdiction and Venue**

3. When the Attorney General of Virginia ("Attorney General") investigates and determines that a fraud has been perpetrated against taxpayers in the Commonwealth, he may bring a civil action under the Virginia Fraud Against Taxpayers Act. See Va. Code §8.01-216.4.

4. In this instance, the Attorney General has investigated the conduct of the Defendants, after receiving certain novel information from Joshua M. Harman ("Harman" or "Relator"), and determined that the fraud against the Virginia Department of Transportation and, thus, Virginia is real and has been continuous and pervasive.

5. This action has its genesis in the sale by Trinity of a guardrail end treatment that has been sold and installed as a safety device on the highways and roads of Virginia. This product was originally designed as and named the ET-2000 and, after certain modifications, was renamed the ET-PLUS. Both the ET-2000 and the ET-PLUS received approval letters from the Federal Highway Administration ("FHWA") as being eligible for federal reimbursement and Virginia approved both for use in Virginia as required. Thousands of these units have been paid for by Virginia, by and through the Virginia Department of Transportation, either in full or in part, and installed on the Commonwealth's highways and roadways.

6. Between 2000 and 2005, Trinity made a series of changes to the design and specifications of the ET-PLUS. Trinity did not disclose these modifications to anyone, including the FHWA and Virginia, and did not seek required approvals of the newly modified ET-PLUS from FHWA or Virginia. Trinity did not properly test the modified ET-PLUS that contained these changes before representing to purchasers that the modified product was approved for use by FHWA and Virginia; rather, Trinity continued to represent that the modified ET-PLUS, which was a new and different product than the ET-PLUS, was approved for use by FHWA and Virginia. Instead of undertaking proper testing and seeking approval, Trinity falsely represented that the modified ET-PLUS was approved for federal reimbursement and approved by Virginia for use in Virginia when approval had never been sought or granted for the modified unit.

7. Between 2005 and today Trinity has continued to make a series of changes to the design and specifications of the ET-PLUS, and Trinity did not disclose these modifications to anyone, including the FHWA and Virginia. Trinity also did not seek required approvals of the modified ET-PLUS from the FHWA or Virginia, nor did Trinity properly test the modified ET-PLUS that contained these changes before representing to purchasers that the modified product was approved for use by FHWA and Virginia. Yet Trinity continued to falsely represent that the modified ET-PLUS was approved for federal reimbursement and approved by Virginia for use in Virginia when approval had never been sought or granted for the modified ET-PLUS.

8. Defendants' intentional failure to disclose to anyone, including the FHWA or Virginia any of the material and substantive modifications to the ET-PLUS caused thousands of guard rail end terminals to be placed on the highways of Virginia that were never approved for such use by Virginia. Trinity's false representations to purchasers that the modified ET-PLUS was approved by FHWA and Virginia caused thousands of unapproved guard rail end terminals

to be placed on the highways of Virginia that were never approved for use by Virginia. The modifications to the old, approved product created a new, different product that was placed on the highways of Virginia that was not and has not been approved by Virginia.

9. The undisclosed modifications to the old ET-PLUS were not harmless improvements or enhancements. If a vehicle strikes the modified ET-PLUS, the modified internal dimensions of the ET-PLUS can cause the guardrail to lock in the throat of the unit, thereby causing the unit to malfunction, creating a hazard to the occupants of the vehicle and others. Many accidents involving the modified ET-PLUS units have resulted in serious injuries and fatalities, when the ET-PLUS units malfunctioned. This loss of life and limb did not occur before Trinity made the undisclosed modifications.

10. Accordingly, the Attorney General is employing his authority to intervene and pursue claims to recover the losses incurred by the Commonwealth and its taxpayers.

11. Harman initiated this action under seal on behalf of the Commonwealth under Va. Code §8.01 216.5, the *qui tam* provisions of the Virginia Fraud Against Taxpayers Act, on February 13, 2013. The Commonwealth, pursuant to this Complaint in Intervention, has intervened in the case pursuant to Va. Code § 8.01-216.5(D).

12. Plaintiff/Relator Harman is a citizen of the United States of America who resides in Swords Creek, Virginia. Harman has developed knowledge of the facts alleged herein and the damages caused to Virginia as a result of Trinity's actions. Harman is the original source of this information and has direct and independent knowledge of all disclosed information upon which the allegations herein are based. He had standing to pursue this case pursuant to the VFATA when it was initiated and when he sought to recover for the benefit of Virginia all appropriate damages, civil penalties, interest and attorneys' fees arising from the presentation of false and/or

fraudulent claims, records and/or statements to Virginia or its departments or agencies and also to share in the recovery as allowed by the VFATA. Therefore, the Commonwealth certifies both that this Complaint in Intervention is brought by the Attorney General of the Commonwealth on behalf of its taxpayers, and that the Complaint in Intervention meets the jurisdictional requirements of Va. Code §8.01-216.8.

13. Virginia is the real party-plaintiff in interest in this litigation and the Attorney General brings this action on behalf of the Commonwealth.

14. Trinity Industries, Inc. is a Delaware corporation doing business in Virginia, with its principal place of business located at 2525 Stemmons Freeway, Dallas, Texas 75207.

15. Trinity Highway Products, LLC, is a limited liability company doing business in Virginia with its principal place of business located at 2525 Stemmons Freeway, Dallas, Texas 75207.

16. This Court has jurisdiction over Trinity Industries and Trinity Highway pursuant to Va. Code § 8.01-328.1 (A) (1), because they have transacted business in Virginia during the relevant period alleged herein, and pursuant to § 8.01-328.1 (A) (4), because they have caused tortious injury, by defrauding Virginia, while engaging in a persistent course of conduct and deriving substantial revenue from goods used in Virginia.

17. Venue lies in this forum under Va. Code § 8.01-262(2) because neither entity has a registered agent in Virginia and therefore, the Clerk of the State Corporation Commission, whose office is in the City of Richmond, is their agent upon which service of process can be made under Va. Code § 13.1-637(B).

18. Prior to the filing of this Complaint, Relator has provided written and evidentiary disclosures to appropriate representatives of Virginia, as required pursuant to the VFATA.

### **Factual Allegations**

19. Trinity is in the business of manufacturing various highway safety and construction products for use across the United States and abroad. In particular, Trinity manufactures the ET-PLUS guardrail end terminal ("ET-PLUS") under an exclusive license agreement from Texas A&M University who is the owner of certain patents. The ET-PLUS 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 Virginia is designed to absorb and dissipate the energy of a vehicular impact. Upon impact the guardrail is extruded through the head and flattened out into a ribbon, thus absorbing the majority of the errant vehicle's energy without severe impact forces that would result in life threatening injuries.

20. The original design of the subject product was a guardrail end named ET-2000. The ET-2000 was subsequently modified and renamed the ET-PLUS. The ET-PLUS, as originally designed, was lighter than the ET-2000 and was originally approved in January, 2000 by FHWA and later in 2000 by Virginia. The original production of the ET-PLUS was initially built according to the design and specifications approved by FHWA and Virginia. That version of the ET-PLUS was overall very successful and Virginia is not aware of evidence that the original, approved design is alleged to or did result in the type of injury being seen since the undisclosed, unapproved modifications.

21. Between 2000 and 2005, Trinity secretly modified certain critical dimensions of the ET-PLUS. Trinity was required to but failed to inform FHWA and Virginia of the changes. These changes created a new and different product even though Trinity continued to call it the ET-PLUS. The new, modified product was never and has never been approved for use on the highways and roadways in Virginia. Despite the lack of approval, thousands of the redesigned

ET-PLUS end terminals have been installed across the Commonwealth and elsewhere. The redesigned and unapproved ET-PLUS terminals should never have been installed in Virginia and they can fail, potentially causing serious bodily injury or damage by impaling drivers and passengers with the very guardrails that were originally intended to protect them.

22. United States highways are primarily regulated by state Departments of Transportation acting on behalf of themselves and as agents for the FHWA. The United States Secretary of Transportation has delegated authority to the state Departments of Transportation to approve on the federal government's behalf all construction plans, specifications, and elements for projects on the National Highway System. 23 U.S.C. §§ 106, 109 (2012).

23. Virginia must enforce the federal conditions for highway projects in the National Highway System in order to receive federal reimbursement, commonly eighty percent (80%) of a project's total cost.

24. Every product used on the National Highway System must undergo rigorous testing to determine and validate crash-worthiness before the product may be placed on the National Highway System. Both federal and state regulations require extensive documentation of the testing that is done to validate crash-worthiness.

25. Once a product is approved for use on the National Highway System, its design specifications cannot be altered without undergoing additional testing and/or approval.

26. Virginia, like other states, requires that VDOT approve any product installed on its roadways. Each highway project in Virginia is governed by contract documents issued by VDOT. These documents require that any products installed on Virginia's highways be both previously approved by VDOT and compliant with National Cooperative Highway Research Program Report 350 ("NCHRP 350"), if tested prior to January 1, 2011, or tested using the

Manual for Assessing Safety Hardware (“MASH”), if presented for testing after that date. Products previously accepted under NCHRP 350 do not need to be retested unless, of course, the product is changed.

27. NCHRP 350, *Recommended Procedures for the Safety Performance Evaluation of Highway Features*, established a performance range on several criteria that guardrail terminals had to satisfy on as many as seven different tests to be deemed safe and reliable for installation. The prime contractor who submits a winning bid on a project must sign contract documents agreeing with VDOT to install only state-approved, NCHRP 350 or MASH-compliant products.

28. Virginia has an Approved Product List for the product at issue (guardrail end terminals known as GR-9s). Trinity manufactures and sells guardrail end terminals under the names ET-2000, ET-PLUS and ET-31. In February of 2000, Trinity wrote to Kenney Payne of VDOT to “introduce our new ET-2000 Extruder Head, the ET-2000 Plus.” Shortly thereafter, Trinity shortened the name from ET-2000 Plus to just ET-PLUS and that product and design appeared on VDOT’s Approved Product List. The version of the ET-PLUS approved by VDOT in 2000 remains on VDOT’s current Approved Product List. VDOT has not approved any other version of the ET-PLUS, including the modified ET-PLUS.

29. VDOT also administers contracts for improvements to roadways that are not part of the National Highway System. These contracts also require the installation of only VDOT-approved products. Specifically, VDOT’s form contractual language requires adherence to the applicable VDOT Road and Bridge Specifications. E.g., VDOT Form C-7 (“I/we understand that the plans and current Road and Bridge specifications, are a part of this proposal . . .”). Two sections of the Specifications, in addition to its incorporation of the Road and Bridge Standards (2008), id. § 105.12 are directly relevant here. First, Section 107.01-.03 requires the contractor



to “observe and comply with” the “federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations,” which necessarily include the federal regulations requiring highway safety products to be NCHRP 350 or MASH- compliant. Second, Section 105.10(c) requires contractors to submit working drawings identifying all “[i]tems or component materials . . . by the specific contract item number.” By incorporating the Standards, the Specifications also require all GR-9s to “be ET-2000 . . . . or other *VDOT approved* equal meeting NCHRP 350 testing criteria.” Standards, § 501.16 (capitalization altered and emphasis added).

30. Guardrails are among the many products installed on Virginia’s roadways. Some guardrails have as their beginning point a component commonly known as an end terminal with a smart part that is recognized as an “extruder head.” End terminals are designed to minimize injury to motorists and occupants of their vehicles, as well as damages to their vehicles coming into head-on contact with a guardrail end.

31. The ET-PLUS employs an “extruder throat” design as a component of the end terminal. Another component of the product is a “feeder chute” assembly that guides the guardrail. When used in conjunction with the standard “W” style guardrail seen throughout the roads and highways of Virginia and elsewhere, the extruder head, as originally designed, absorbed and dissipated the energy of a vehicular impact. Upon impact, the guardrail is extruded through the head, flattened into a ribbon, and deflected away from the path of the moving vehicle. This design process absorbs most of the energy of the collision, brings about a safe deceleration of the vehicle following impact, prevents the guardrail from penetrating the vehicle and maintains the vehicle in an upright position.

32. As stated previously, the original ET-PLUS is a modified product. The initial product was designed and marketed as the ET-2000.

33. The ET-2000 was initially approved by the FHWA in 1996 under NCHRP 350 standards.

34. The ET-2000 was modified in 1999 and submitted for approval to the FHWA. No modifications were made to the feeder chute but the new product marketed as the ET-PLUS was approximately 100 pounds lighter and had changes to the impact plate, head brace interior deflector plate and other design changes unrelated to the extruder head. The product was crash-tested using NCHRP 350 test 3-31. The FHWA approved the new ET-PLUS design in 2000. This is the ET-PLUS product--and the only ET-PLUS product--approved by VDOT from 2000 to the present.

35. The extruder throat component of the ET-PLUS as tested, accepted and manufactured had an exit gap of 1.3 inches or larger. Its feeder chute component's dimensions were 5 inches wide, with an exterior and interior height of 15 3/8. The length was 37 inches.

36. The ET-PLUS built to the specifications approved in 2000 was successful. Not only did it work as designed upon initial impact, but, in many instances, it continued to work if struck again in a subsequent incident prior to repair.

37. At some point in or after 2000, Trinity secretly modified the ET-PLUS extruder throat to shrink the exit gap from at or greater than 1.3 inches to 1.0 inches. In or about 2005, Trinity again secretly modified the ET-PLUS by dramatically altering the product's dimensions and geometry. The 2005 ET-PLUS was manufactured with a four inch wide feeder chute, instead of the tested and approved five inch feeder chute, and the internal vertical dimension of the feeder chute was compressed from 15 3/8 inches to 14 3/8 inches. The length of the feeder chute was shortened from 37 inches to 36 1/4 inches. These changes materially reduced the interior clearance of the feeder chute. None of these changes were disclosed to Virginia. This

altered and unapproved product made its appearance on Virginia roadways in late 2005 or early 2006. Based on terminals measured in the field, Trinity continued to make changes to the terminal head even after the 2005 test.

38. Trinity never disclosed any of these design changes to VDOT or any other federal or state regulatory body prior to 2012.

39. Despite petitioning the FHWA for approval for modifications to other components of the ET-PLUS system, Trinity never applied for federal approval of the exit gap change or feeder chute dimension changes.

40. Trinity never applied for nor received approval from VDOT to place on Virginia highways an end terminal with different geometry or different dimensions than what VDOT approved in 2000. Therefore, every ET-PLUS product sold by Trinity to a contractor and installed on a Virginia highway after 2005 is a product not approved for use in Virginia by VDOT.

41. After 2005 Trinity, was knowingly and intentionally selling an unapproved product to contractors for installation on Virginia highways yet Trinity consistently misrepresented to VDOT, the contractors and the public at large that its ET-PLUS end terminal was approved for installation. Between 2006 and 2012, Trinity's website falsely stated that the ET-PLUS it was selling had been approved by all applicable regulatory authorities. Trinity also falsely asserted on its website and in required certifications provided to VDOT contractors and installers that the ET-PLUS it was selling was NCHRP 350-compliant. These statements are and were false because the modified product sold since October 1, 2005, was never tested to be compliant with the NCHRP 350 Test Level 2 and 3 as required, nor was it disclosed to or approved by any regulatory authority, including Virginia.

42. By falsely representing regulatory approval and NCHRP 350 compliance, Trinity has knowingly caused contractors to submit false claims to Virginia. As noted *supra*, VDOT's Road and Bridge standards require an "alternate breakaway cable terminal (GR9) . . . to be ET 2000 . . . or other *VDOT approved* equal meeting NCHRP 350 testing criteria." (emphasis added). The secretly modified ET-PLUS product to this day has never been approved by VDOT.

43. Trinity further deceived prime contractors and/or their subcontractors into using the ET-PLUS by falsely representing in its advertising materials and in required VDOT certifications that the product had all necessary regulatory approvals and was NCHRP 350-compliant. Neither representation was true because the modified version of the ET-PLUS that Trinity sold after October 1, 2005, did not have the same geometry, i.e., dimensions as (i) what Trinity submitted to the VDOT for approval in 2000, or (ii) what Trinity or its surrogates supposedly tested in 2005. Trinity's false representations caused the prime contractors to submit false claims to VDOT in 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013 and up to October 15 of 2014 and VDOT, in turn, unknowingly and unwittingly submitted many of those claims to the federal government.

44. VDOT generally paid twenty percent (20%) of the claims it submitted to the federal government, all of which submittals were caused directly and solely by Trinity.

45. VDOT paid one hundred percent (100%) of the remaining claims.

46. After being told by Harman in early 2012, the FHWA became aware for the first time that the changes to the geometry and dimensions of the extruder head had not been presented for modification approval. FHWA then contacted Trinity to discuss the issues.

47. In a meeting held on Feb 14, 2012, representatives of Trinity and Texas Transportation Institute, ("TTI"), the entity that tested the ET-PLUS, admitted to FHWA that

they had modified the ET-PLUS to use 4 inch wide channels instead of the 5 inch wide channels that were previously approved.

48. Trinity and TTI falsely led FHWA to believe that this was the only change made to the ET-PLUS. Yet, Trinity had also shrunk the exit gap opening and had compressed the internal vertical dimension of the ET-PLUS feeder chute by one inch and had shortened the length of the feeder chute by  $\frac{3}{4}$  of an inch. It was only relatively recently that Trinity has admitted that they made these additional changes.

49. In addition at no time did Trinity or TTI disclose to the FHWA or to the Virginia Department of Transportation that they had five failed NCHRP 350 tests during the 2005-2006 time frame involving the modified, 2005 ET-PLUS terminal head. These so called "flared" tests are highly relevant to Trinity's knowledge in that these tests show the ET-PLUS terminal head failing when impacted at an angle of 4 - 6 inches, which thus became the critical angle, which is often how the ET-PLUS is installed in Virginia and elsewhere. NCHRP 350 requires someone seeking approval for a product from FHWA to first disclose all relevant information and they must then conduct the test mandated by FHWA. Trinity never did this. They did not disclose the changes to the ET-PLUS and did not disclose the failed flared tests either. Under NCHRP 350 established criteria, all of this information leads to the conclusion that additional testing of the modified ET-PLUS is required, e.g., the critical angel test an 4 - 6 degrees of flare. Based on the failures seen in the flared tests, Trinity knew that failure was most likely at 4 to 6 or so degrees, so that is the test they were required to run, not at 0 or 15 degrees. Following the change to a 4 inch terminal, Trinity also continued to seek approvals from the FHWA based on tests run on the 5 inch terminal. Without the appropriate disclosure, the FHWA was led to believe the terminal still had 5 inch guide channels.

50. By email dated Feb 28, 2012, Dr. Roger Bligh of TTI, falsely represented to FHWA that the secretly modified ET-PLUS sold since 2005, had been fully and appropriately tested in May 2005. As Dr. Bligh and Trinity well knew, contrary to generally accepted practice, there is no drawing of what TTI tested in May 2005 that was made prior to the testing, the prototypes that were tested were not retained to prove what was tested, and additional changes were made to the modified ET-PLUS after the May 2005 testing.

51. These post-test modifications included compressing the vertical dimension and shortening the length of the feeder chute.

52. Trinity and its agent TTI failed to disclose to the FHWA or Virginia that the geometry and dimensions of the ET-PLUS being installed on Virginia's highways were different than what was crash tested even in the May 2005 test.

53. The representations made by Trinity that the modified ET-PLUS had been properly tested, that the modified ET-PLUS had been approved for reimbursement by FHWA, and that the modified ET-PLUS had been approved for use in Virginia were made with knowledge of their falsity or with a deliberate, willful or grossly negligent failure to investigate adequately the truth or falsity of the representation.

54. Furthermore, while Trinity finally admitted in 2012 to FHWA that it failed to disclose the change to the width of the feeder chute, it did not disclose--nor upon information and belief has it ever voluntarily disclosed--to any regulatory authority, other than by making admissions during trial or deposition, the shrunken exit gap, the shortened height or length modifications to the ET-PLUS.

55. Trinity continued to mislead and deceive VDOT, contractors and others through the dissemination of a "To whom it may concern" letter dated March 14, 2012. This letter

repeats Trinity's and TTI's false statements regarding the 2005 testing of the feeder head. Trinity's claim that "[t]he ET-PLUS™ was subjected to all FHWA- required, NCHRP 350 crash testing at TTI" is false as to the ET-PLUS placed on Virginia highways after 2005. Post-test changes made to the geometry and dimensions of the end terminal were never tested and were not incidental, meaningless changes that were merely overlooked by Trinity. Emails indicate Trinity intended to make this change without any announcement. The geometry and dimensions of the product on the highways of Virginia are not the same geometry or dimensions as that tested and approved by any regulatory body, and Trinity's assertions to the contrary are false.

56. Trinity also attempted to prevent the truth of its deceptions from coming to light by trying to dissuade a witness with knowledge of facts relevant to the performance of the ET-PLUS from testifying in court proceedings.

57. By never disclosing the changed geometry and dimensions of the ET-PLUS to VDOT and by not obtaining VDOT approval of those changes, the product is not and has not been authorized for installation on Virginia roadways. Trinity thereby knowingly and fraudulently caused contractors to submit false claims for unauthorized products.

58. The failure of Trinity to properly test and obtain approval for the post 2005 ET-PLUS is not a simple matter of formality. The post-2005 ET-PLUS has failed and continues to fail in highway applications. Expert review of accident reconstruction reports reveal the failure of the ET-PLUS to be consistent with failure modes identified in static and dynamic testing.

59. Among the many performance problems of the secretly modified ET-PLUS is that the guardrail does not feed properly through the feeder chute due to the reduced area of the feeder chute itself. This causes the guardrail to "throat lock" in the head during impact. Once

throat locked, the energy of the crash is diverted elsewhere which can cause the guardrail to double over on itself or to protrude through the crashing vehicle.

60. If the guardrail and head assembly protrude like a spear through the vehicle, the result can be death or serious bodily injury to the persons in the vehicle.

61. Upon information and belief, there are thousands of these defective, unapproved heads in use on the National Highway System roadways passing through Virginia and on the state and local roadways in Virginia. The potential for danger is obvious. Harman claims to be personally aware of many, many injuries involving the modified ET-PLUS in Virginia, as well as injuries and fatalities in other states.

62. In the accidents involving the modified ET-PLUS that he reviewed, Harman has not seen the modified ET-PLUS extruder head function properly in over two hundred accidents when hit head on.

63. Trinity, by and through local highway contractors and through Virginia implementing federally funded highway projects, made millions in revenue from this defective, unapproved and improperly tested product at the expense of Virginia and her taxpayers.

**Cause of Action**  
**Virginia Fraud Against Taxpayers Act**

64. Virginia restates and re-alleges the allegations contained above as if each were stated herein in their entirety and said allegations are incorporated herein by reference. As a result of these allegations Trinity has violated the VFATA.

65. Trinity and its agents and employees knowingly made, used or presented and/or caused claims to be made, used or presented to VDOT by presenting or causing to be presented invoices or other certifications and statements containing false and fraudulent claims for payment and approval by VDOT. Beginning sometime in 2005 and continuing to the present,



every invoice submitted by Trinity, its agents, or contractors or subcontractors submitting invoices containing a claim for payment for the ET-PLUS, constitutes a false claim under the VFATA. Under the VFATA “knowing” includes acting “in reckless disregard of the truth or falsity of the information.”

66. Trinity and its agents and employees knowingly made, used, or caused false records or statements material to a false or fraudulent claim to be made or used for payment from VDOT. Beginning sometime in 2005 and continuing to October 15, 2014, every invoice submitted by suppliers, contractors or subcontractors installing the Trinity ET-PLUS product sought payment materially relying upon a false record or statement from Trinity or its agents thereby violating the VFATA.

67. VDOT, unaware of the falsity of the claims and deliberately deceived by Trinity, and in reliance on the accuracy of the submitted claims, paid money to either Trinity directly or indirectly by paying the various highway contractors for the false and/or fraudulent claims for the Trinity ET-PLUS.

68. Virginia and her taxpayers have been damaged as a result of Trinity’s violations of the VFATA.

#### **PRAYERS FOR RELIEF**

WHEREFORE, Virginia prays for entry of judgment against Trinity as follows:

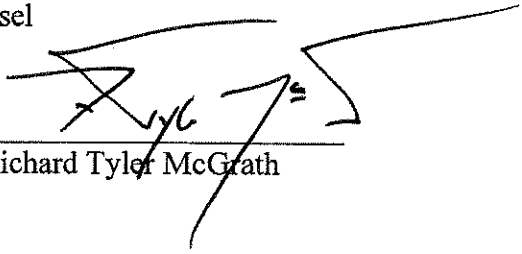
- a. that Trinity be ordered to pay actual damages equal to an amount sufficient to cover, *inter alia*, the cost of removing and replacing every noncompliant ET-PLUS currently installed on the public roadways of Virginia and that the amount of such actual damages be trebled pursuant to the VFATA;

- b. that Trinity be ordered to pay a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation of the VFATA;
- c. that Trinity be ordered to pay reasonable attorneys' fees, costs and expenses to the Attorney General's office pursuant to the VFATA;
- d. that Trinity be ordered to pay reasonable attorneys' fees, costs and expenses to Harman pursuant to the VFATA;
- e. that Harman be awarded some reasonable amount as outlined and allowed pursuant to the *qui tam* provisions of the VFATA;
- f. that Trinity be ordered to pay pre-judgment and post judgment interest on the award ordered herein; and
- g. that Trinity be ordered to comply with such other relief as this Court deems just and appropriate.

**JURY TRIAL DEMAND**

Trial by jury is demanded as to all eligible issues.

The Commonwealth of Virginia  
By Counsel



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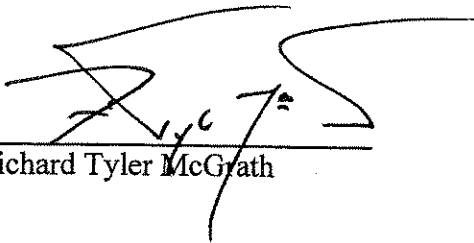
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 11, 2014, a true copy of the foregoing  
Complaint was hand-delivered/served on the following counsel for the Trinity defendants:

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