

On October 20, 2014, a jury in Texas returned a verdict of \$175 million against guardrail manufacturer, Trinity Industries, Inc. ("Trinity"). The jury found that Trinity deliberately withheld information about cost-saving changes to the design of its highway guardrail system that increased the dangers faced by motorists on the nation's highways. The qui tam ("whistleblower") lawsuit alleged that Trinity made secret design changes that transformed one of its products into a dangerous highway hazard, all while representing that the product was eligible for federal funding and defrauding the government of some \$218 million. The suit was brought under the False Claims Act by Joshua Harman, a maker and installer of guardrail systems in Virginia.

The False Claims Act allows for private individuals and companies to bring suit in the name of the government where another party has defrauded the government in some way. Based upon the jury's finding that Trinity defrauded the federal government, the damages to be awarded against the company will be tripled and added to a penalty to be determined by the judge. The total liability for Trinity could reach \$1 billion.

The federal court jury's verdict follows as scrutiny of the highway safety product, called the ET-Plus, increases across the nation. In early October, the Federal Highway Administration asked all states to start submitting information on crashes involving the ET-Plus to the agency's safety office. Four states have banned new installations of the ET-Plus on their highways. In addition, Trinity faces personal injury and wrongful death lawsuits in which the plaintiffs assert that the guardrail system did not perform properly and caused additional injuries in motor vehicle collisions.

The product in question is a 175-pound steel mechanism that mounts onto the end of a guardrail and is meant to cushion the impact of a crashing car. Instead of acting like a shock absorber, Trinity's secretly revised version locks up and can impale oncoming vehicles. Unbeknownst to users of the product, Trinity revised the design by shortening a key component from five inches to four inches in a cost-saving measure. Testimony from Trinity's president at trial established that Trinity did not report to the states that it had changed the design and indeed had falsely represented to various states that the design was identical to the original version that had been approved by federal regulators.