

Note 18. Commitments and Contingencies *Highway Products Litigation*

On September 2, 2011, the Company and the Texas A&M University System, as Plaintiffs, filed litigation in Virginia asserting claims of patent and trademark infringement against SPIG Industry, LLC, SPIG Industry, Inc., and Selco Construction Services, Inc. The litigation alleged that without authorization SPIG Industry, LLC and SPIG Industry, Inc. manufactured and sold, and Selco Construction Services, Inc. installed certain highway guardrail end terminal products that copied the Plaintiffs' ET-Plus System ("ET-Plus").

The ET-Plus is a patented, energy-absorbing, guardrail end terminal system designed by engineers at the Texas A&M Transportation Institute. The ET-Plus is manufactured under license, marketed and sold by Trinity Highway Products, LLC, a wholly owned subsidiary of the Company. The ET-Plus is typically purchased by state Departments of Transportation and highway construction contractors for use along roadways and medians. The Company settled the infringement lawsuit on acceptable terms and thereafter proceeded with defamation and disparagement lawsuits in Texas and Georgia alleging that Joshua Harman, an officer in each of SPIG Industry, LLC, SPIG Industry, Inc., and Selco Construction Services, Inc. has made and continues to make egregiously false and misleading statements and claims about the ET-Plus and the Company.

In a related matter, on January 28, 2013, the Company was advised that the United States filed a "Notice of Election to Decline Intervention" in a False Claims Act (Qui Tam) complaint filed under seal on March 6, 2012 in the United States District Court for the Eastern District of Texas, Marshall Division styled JOSHUA HARMAN, on behalf of the UNITED STATES OF AMERICA, PLAINTIFF/Relator ("Mr. Harman") v. TRINITY INDUSTRIES, INC., DEFENDANT, Case 2:12-cv-00089-JRG. Although the Company has not received service of process in this litigation, it has obtained a copy of the complaint. Mr. Harman alleges that the Company presented false or fraudulent claims, records or statements to the United States to obtain payment or approval, ostensibly related to the ET-Plus, and seeks damages equaling the cost to recall and replace all installations of the ET-Plus plus treble civil penalties, costs, and interest. The Company notes that since its introduction in 2000, including all improvement modifications thereafter, the ET-Plus has satisfied the testing criteria required by the governing National Cooperative Highway Research Program Report 350 and the product approval requirements of the Federal Highway Administration. The Company intends to vigorously defend Mr. Harman's allegations which will likely result in certain legal expenses. We do not believe that a loss is probable nor can a range of losses be determined. Accordingly, no accrual or range of loss has been included in the accompanying consolidated financial statements.