

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TRINITY INDUSTRIES, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:11cv937-CMH-TRJ
)	
SPIG INDUSTRY, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF HEATHER PERTTULA RANDALL

I, Heather Perttula Randall, declare as follows:

1. My name is Heather Perttula Randall, and I am the Vice President, Legal Affairs and Government Relations of Trinity Industries, Inc. (“Trinity”), the Plaintiff in this matter. My business address is 2525 Stemmons Freeway, Dallas, Texas 75207. I have personal knowledge of the matters set forth in this Affidavit.

2. My job duties include the engagement and management of Trinity’s outside litigation counsel.

3. Douglas E. Spiker, a partner in the Akron, Ohio office of Roetzel & Andress, LPA (“Roetzel”), has represented Trinity in regard to its Ohio workers’ compensation claims for over 15 years.

4. On or about September 28, 2011, Mr. Spiker (on behalf of Roetzel) requested that Trinity waive the conflict of that law firm’s concurrent representation of two entities – Roetzel’s continued representation of Trinity in Ohio, and Roetzel’s new representation of SPIG Industry, LLC, SPIG Industry, Inc. and Selco Construction Services, Inc. in Virginia, adverse to Trinity.

Exhibit L. Trinity cited to Roetzel's role in the Website and the Presentation as ground for revoking the conflict waiver.

17. By the scope of the Waiver Letter signed on October 5, 2011, Trinity did *not* (and never would) grant a waiver for Roetzel to concurrently represent SPIG/Selco and participate in claiming that:

- Trinity's ET-Plus products (at issue in the patent litigation) are killing people,
 - the current iteration of Trinity's ET-Plus was not approved by the federal agency,
- and
- the ET-Plus "fatal head" should be a rallying point "to connect individuals for a class action lawsuit" against Trinity and The Texas A&M University System.

18. Trinity concluded by stating that "these actions have created an absolute and irreconcilable conflict of interest between Roetzel & Andress and Trinity. Trinity therefore also demands your immediate withdrawal as counsel to [SPIG/]Selco per Rule 1.7. It is clear that your representation of [SPIG/]Selco in this matter is now in direct and material conflict with the overall business of Trinity, and in fact, has caused Trinity incalculable damage." Ex. L at 2.

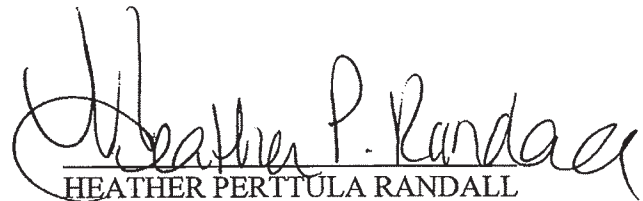
19. Roetzel rejected Trinity's rescission of the waiver on February 7, 2012, in a letter from Roetzel's General Counsel Kevin J. Osterkamp. A copy of the letter is attached to the Plaintiffs' Memorandum in Support of Motion to Disqualify as **Exhibit M**. In Mr. Osterkamp's letter, Roetzel denied any conflict in its concurrent representations and stated: "*Roetzel will not be withdrawing from either representation.*" Instead, Roetzel suggested that Trinity could terminate Roetzel's representation of it in Ohio. *See id.* ("you may conclude that our services are no longer needed").

20. In Mr. Osterkamp's letter, Roetzel did not deny any of the allegations in my February 3rd letter. In particular, Roetzel did not dispute the role of Mr. Monin in creating the Presentation for SPIG, and the foreknowledge of Messrs. Maskell and Monin regarding Mr. Harman's Website.

21. As of the date I am executing this Affidavit, Roetzel has not withdrawn from representing SPIG/Selco in the Virginia patent litigation, and Roetzel refuses to do so.

22. I understand that attorneys representing Trinity will be filing this Affidavit with this Court with a Motion to Disqualify Counsel for Defendants SPIG and Selco.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on February 23, 2012, in Dallas, TX.


HEATHER PERTTULA RANDALL