

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

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

**PLAINTIFFS’ MEMORANDUM IN OPPOSITION TO DEFENDANTS’
MOTION TO COMPEL PLAINTIFFS TO PRODUCE THEIR PHOTO
ANALYSIS OF THE MAY 27, 2005 TEST**

Plaintiffs Trinity Industries, Inc. (“Trinity”) and The Texas A&M University System (“TAMUS”) (collectively, “Plaintiffs”), by and through their undersigned counsel, submit this Memorandum in Opposition to Defendants’ Motion to Compel Plaintiffs to Produce Their Photo Analysis of the May 27, 2005 Test (D.N. 280). Defendants’ Motion should be denied for the simple fact that the document sought by Defendants already has been produced.

OPPOSITION STATEMENT

Defendants seek production of “photographic analysis of a May 27, 2005 crash test involving the ET PLUS guardrail head,” which Defendants claim has not been produced. Defendants are mistaken; the photo analysis of the May 27, 2005 test *has been produced*. The document Defendants seek, which is the subject of Defendants’ Motion, was timely produced on June 4, 2012 with Bates number TRINITY012683. Defendants also are referred to Plaintiffs’ document production Bates numbered TAMUS007746 through TAMUS007923, which includes the test report of the ET-Plus and the native format of the document used for the photo analysis.

During the Rule 30(b)(6) deposition of Dr. Roger P. Bligh, which took place on August 16, 2012, Defendants questioned Dr. Bligh with regard to the analysis of the May 27, 2005 test and the manner in which it was determined that the rail feeder channel was four inches wide. The document previously produced by Plaintiffs—TRINITY012683—represents that analysis.

Also, Defendants have referred to this document during discovery. For example, at the deposition of non-party witness Mr. Artimovich of the Federal Highway Administration, which took place on July 26, 2012, Defendants' counsel referred to the document. As such, Defendants' Motion should be denied.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request the Court issue an order denying Defendants' Motion to Compel Plaintiffs to Produce Their Photo Analysis of the May 27, 2005 Test.

Dated: August 22, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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