

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

JACKSON COUNTY, MISSOURI,)	
individually and on behalf of a class of)	
others similarly situated,)	
)	
Plaintiff,)	Case No. 1516-CV23684
)	Division 2
v.)	
)	
TRINITY INDUSTRIES, INC., et al.)	
)	
Defendants.)	

**ORDER
GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiff Jackson County, Missouri’s Motion to Preliminarily Approve Class Action Settlement, Suggestions in Support, and the Affidavit of Patrick J. Stueve (lead counsel for the class). Plaintiff’s motion attaches the Class Action Settlement Agreement (“Settlement Agreement”) (Ex. 1 to the Stueve Affidavit), the Settlement Notice (Ex. A to the Settlement Agreement), the Claim Notice (Ex. B to the Settlement Agreement), and the Claim Form (Ex. C to the Settlement Agreement).

The Court has reviewed the motion, suggestions, and supporting materials and finds that preliminary approval of the settlement is warranted under Missouri Supreme Court Rule 52.08(e). Accordingly, after careful review of the record, the Court **GRANTS** Plaintiff’s motion and **ORDERS** as follows:

- Preliminary Approval of the Settlement Agreement.** The Settlement Agreement, including its exhibits, is preliminarily approved as fair, reasonable, and adequate and within the range of reasonableness for preliminary settlement approval. The Missouri Court of Appeals for the Western District articulated the factors that warrant preliminary approval of class

action settlements in *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369 (Mo. App. 1997). The Court finds that each factor is satisfied.

First, the Court finds that the settlement is not the product of fraud or collusion. This case was litigated for nearly seven years and up to the verge of a class action trial. Further, the settlement negotiations were presided over by the Hon. Charles E. Atwell (Ret.) formerly of the Circuit Court of Jackson County, Missouri. This factor weighs in favor of preliminary approval.

Second, the Court finds that the complexity, expense, and likely duration of the litigation weigh in favor of preliminary approval. As noted above, this case has been litigated for nearly seven years. Absent settlement, there can be little doubt that a class action trial and subsequent appeal would have occurred. This factor weighs in favor of preliminary approval.

Third, the advanced stage of proceedings and significant discovery weigh in favor of approval. Plaintiff's counsel attests that millions of pages of documents have been exchanged in the litigation and the parties have conducted more than 20 depositions in this case. And as noted above, this case was settled only on the verge of trial. This factor weighs in favor of preliminary approval.

Fourth, the probability of Plaintiff's success on the merits weighs in favor of preliminary approval. This case was set for a three-week jury trial in April 2022. There is inherent risk to any plaintiff's claims in a jury trial. This factor weighs in favor of preliminary approval.

Fifth, the range of possible recovery weighs in favor of preliminary approval. Class Counsel represents that this settlement potentially affords complete or nearly complete relief to class members in that it provides a cash fund for reimbursement of previously removed undamaged 4-inch ET Plus devices that are claimed and approved, a cash fund to pay for the cost of identifying the 4-inch ET Plus devices that are currently on class members' roads, the products and cash to

remove and replace the undamaged 4-inch ET Plus devices that are currently on class members' roads that are claimed and approved, and the funds to pay for Class Counsel's fees and expenses and the cost to administer the settlement over the next six years. In Plaintiff's Motion to Preliminarily Approve Class Action Settlement, Class Counsel estimated that the settlement could provide \$56,000,000 of value in cash and products. This factor weighs in favor of preliminary approval.

Sixth, the opinions of Class Counsel, class representative, and absent class members weigh in favor of approval. Class Counsel have decades of experience prosecuting product liability and complex claims like this case throughout the country and they support the settlement as does Plaintiff Jackson County. Because class members have not received notice and the objection period has not begun, the opinions of absent class members do not impact this factor at preliminary approval (it is an inquiry for the final approval stage). This factor weighs in favor of preliminary approval.

Based on the foregoing, the Court finds that the settlement is preliminarily approved under Rule 52.08(e).

2. Class Certification. The Court previously certified and declined to decertify the following class:

All Missouri counties with populations of 10,000 or more persons as determined by the Missouri Census Data Center as of July 1, 2014, including the independent city, the City of St. Louis, and the State of Missouri's transportation authority, that have or had ET-Plus guardrail end terminals with 4-inch wide feeder chutes installed on roadways they own and maintain.

See Findings of Fact, Conclusions of Law, and Order of Class Certification dated December 6, 2017; *see also* Order Denying Trinity's Motion to Decertify Class dated November 19, 2021. Thus, maintaining the class action for purposes of settlement under Rule 52.08(e) is appropriate.

3. **Class Counsel and Representatives.** The Court confirms its earlier appointment of Patrick J. Stueve, Bradley T. Wilders, and Alexander T. Ricke of Stueve Siegel Hanson LLP as Class Counsel under Rule 52.08 to act on behalf of the certified class with respect to settlement. The Court likewise confirms its earlier appointment of Plaintiff Jackson County, Missouri to act as Class Representative for purposes of settlement.

4. **Class Notice Plan.** The proposed notice plan, including the direct mailing of the Settlement Notice, Claim Notice, Claim Form and the creation of the settlement website is the best notice practicable under the circumstances under Rule 52.08(c). The notice plan is a reasonable manner of notice, and constitutes valid, due, and sufficient notice to class members in full compliance with the requirements of applicable law, including but not limited to the Due Process Clause of the United States Constitution, and is therefore approved. The Settlement Administrator is directed, under the supervision of Class Counsel, to carry out the notice plan. The Court further approves the contents of the Settlement Notice, the Claim Notice, and the Claim Form. Subject to Class Counsel's approval, the Settlement Administrator is directed to format and modify the notice and form to accommodate the submission of claims as necessary.

5. **Claims Administrator.** Analytics Consulting LLC is hereby appointed as the Settlement Administrator to implement the notice plan as outlined in the Settlement Agreement.

6. **Service Award.** The Court will take up the requested service award at the final approval stage but does not find at this stage that the agreed and separately paid service award deters from the fairness of the settlement.

7. **Attorneys' Fees, Expenses, and Costs.** The Court will take up the award of Class Counsel's attorneys' fees, expenses, and costs at the final approval stage but does not find at this stage that the requested amounts are unreasonable or would impair a finding that the settlement

is fair.

8. Objections. Class members will have 45 days from the date the Settlement Notices are mailed to object to the Settlement Agreement. Any objections must be submitted in writing and contain: (1) identification of the class member and reasonable supporting documentation evidencing the objector's right to act on behalf of the class member, including proof that objector is a class member; (2) identification of any counsel representing the objecting class member; (3) the factual and legal basis for the objection; and (4) a statement of whether the class member plans to appear in person at the final fairness hearing. Any objections must be mailed to the Settlement Administrator, who shall promptly remit copies to Class Counsel and Defendants' counsel. Any objection that is not postmarked on or before 45 days from the date of the mailing of the Settlement Notices will be untimely and not considered.

9. Opt Outs or Requests for Exclusion. The Settlement Agreement does not provide a second opportunity for class members to opt out or request exclusion. Given that this Court previously granted class certification and class members were given an opportunity to opt out or request exclusion after mailing of direct notice and none did, the Court finds that the decision not to include an opt out period is reasonable under the circumstances of this case and consistent with Missouri law. *Doyle v. Fluor Corp.*, 400 S.W.3d 316, 324 (Mo. App. E.D. 2013) (affirming approval of class action settlement on appeal and holding: "to extinguish all doubt, we find no abuse of discretion in the trial court's determination that a second opt-out period is not required under Rule 52.08 and would have unnecessarily disrupted settlement proceedings and prolonged the case to the detriment of all parties.").

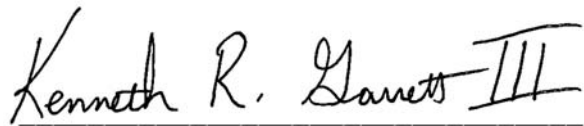
10. **Final Approval Hearing.** The Court hereby sets a final approval hearing on:

**August 30, 2022 at 0900 hours in Division 2
Located at Eastern Jackson County Courthouse
308 W. Kansas- 2nd Floor
Independence, Missouri 64050**

11. The Court exerts exclusive and continuing jurisdiction over the claims and issues in this litigation and specifically over all aspects related to the proposed Settlement.

IT IS SO ORDERED.

Dated: May 30, 2022

A handwritten signature in black ink that reads "Kenneth R. Garrett III". The signature is written in a cursive style with a horizontal line underneath the name.

Kenneth R. Garrett III
Circuit Judge, Division 2
Circuit Court of Jackson County, Missouri