

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

APR 18 2001

DAVID J. MALAND, CLERK  
BY Brenda Carter  
DEPUTY

U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

INTERVENOR,

v.

TRINITY INDUSTRIES, INC.,

DEFENDANT.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION No. 1:00CV-598

**INTERVENORS' AMENDED COMPLAINT IN INTERVENTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, MELBA THOMAS and PERCY SIMMONS, JR., hereinafter "Intervenors," by and through their undersigned counsel, and files this their Amended Complaint in Intervention pertaining to the above-referenced cause of action, and would show unto the Court as follows:

**Jurisdiction and Venue**

**I.**

This action is brought to remedy discrimination on the basis of race under the terms, conditions, and privileges of employment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., and the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1981.

**II.**

Jurisdiction of this Court is invoked pursuant to 28 USC §§ 1331 and 1343 and the federal statutes set forth above. Venue is proper since the unlawful employment practices

29

alleged in this complaint were committed within the jurisdiction of the United States District Court, Eastern District of Texas, Beaumont Division.

### III.

Intervenors are African-American employees or former employees of Defendant, and are residents of Jefferson County, Texas.

Defendant, Trinity Industries, Inc. ("Trinity"), has at all relevant times herein been a Delaware Corporation doing business in the State of Texas and the City of Beaumont, and has continuously had at least 15 employees and upon information and belief employees hundreds or thousands of people nationwide. Trinity may be served with process by serving its registered agent, C.T. Corp. Systems, 350 North Paul St., Dallas, Texas 75201. At all relevant times, Defendant has been an employer engaged in an industry affecting commerce within the meaning of 42 USC § 2000e.

### IV.

Intervenor Percy Simmons, Jr., filed a charge of discrimination on the basis of race against Defendant with the Texas Commission on Human Rights and the Equal Employment Opportunity Commission ("EEOC") on or about October 7, 1998, and amended thereafter, complaining of the acts of race discrimination alleged herein. See copy previously attached. On or about July 20, 2000, Mr. Simmons requested and received a "Right to Sue" letter from the EEOC. Mr. Simmons has complied fully with all administrative prerequisites under the Title VII Civil Rights Act of 1964, as amended.

Intervenor Melba Thomas filed a charge of discrimination on the basis of race against Defendant with the Texas Commission on Human Rights and the Equal Employment Opportunity Commission ("EEOC") on or about May 1999, complaining of the acts of race discrimination alleged herein. On or about August 17, 2000, the EEOC issued

a Determination which concluded, among other things, that "in light of the facts in this case, the Commission concludes that there is reasonable cause to believe that [Trinity] discriminated against [Ms. Thomas] because of her race, Black, by issuing her a written reprimand and in retaliation for filing a charge of discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended." See Exhibit "B" attached hereto. Ms. Thomas received a "Right to Sue" letter on November 1, 2000 from the EEOC. See "Exhibit A" attached. Ms. Thomas has complied fully with all administrative prerequisites under the Title VII Civil Rights Act of 1964, as amended.

#### V.

Intervenors are members of a protected class of individuals on the basis of their race.

Regarding Percy Simmons, Jr., on or about June 26, 1998, a white employee with less experience than him was hired into the position of Paint Shop Superintendent. Intervenor was denied the promotion to that position although he has performed the duties of the position. Furthermore, Intervenor had been a supervisor for over two years and had not received any bonuses. Subsequently, on other occasions including but not limited to April 19, 1999, Intervenor Simmons was again passed over for a promotion. These actions were based on Intervenor's race and/or in retaliation for filing a complaint with the EEOC, and as such were illegal under the statutes referenced above.

Regarding Intervenor Melba Thomas, on or about May 13, 1999, she received a written warning from her direct supervisor, allegedly for a performance related issue. However, similarly situated White employees who had committed similar or more serious errors were not reprimanded. Further, Intervenor Thomas was subjected to discrimination by being transferred to undesirable and unsafe workstations.

Shortly before September 30, 1999, members of Trinity management called Intervenor Thomas and others to a meeting, where they were told that the employees would have to increase normal production in order to fill a large order for approximately 300 railcars. At that time Ms. Thomas indicated that the job she had been assigned was beyond her physical capabilities, thereby putting her own safety and that of her co-workers at risk. However, instead of taking actions designed to protect the safety of Ms. Thomas and her co-workers, Trinity management attempted to use this situation to once again try to force Ms. Thomas to quit, all as part of the practice of discrimination and retaliation that had already been inflicted upon her. Ms. Thomas refused to quit but was ordered to continue to work on the assembly line despite her safety concerns.

At one point during the production process, again as part of the practice of discrimination and retaliation referred to above, Trinity supervisor told Ms. Thomas and her co-worker that if they did not get a car out in 45 minutes, they would be fired. In the process of trying to meet that demand, Ms. Thomas' foot and hand were crushed by the railcar, traumatically amputating both extremities.

## VI.

Intervenor repeats and realleges each and every allegation in Paragraphs numbered I through VIII of this complaint with the same force and effect as if fully set forth herein.

## VII.

As to Intervenor Simmons and Intervenor Thomas, in the above acts, Defendant violated Title VII of the Civil Rights Act of 1964, as amended, by discriminating against Intervenor Simmons because of their race in the terms, conditions, and privileges of their employment, and by engaging in acts of retaliation motivated by their asserting their

rights, and in those respects Trinity acted with malice and reckless disregard for Intervenor's federally-protected rights.

### VIII.

As to Intervenor Simmons and Intervenor Thomas, in the above acts, Defendant violated the Civil Rights Act of 1871, 42 USC 1981, by discriminating against Intervenor because of their race in the terms, conditions, and privileges of their employment, and by engaging in acts of retaliation motivated by their asserting their rights, and in those respects Trinity acted with malice and reckless disregard for Intervenor's federally-protected rights.

### IX.

Intervenor Simmons and Intervenor Thomas is now suffering and will continue to suffer irreparable injury, monetary damages, and damages for mental anguish and humiliation as a result of Defendant's discriminatory practices unless and until this Court grants relief. Intervenor Thomas is now suffering and will continue to suffer irreparable injury, monetary damages, and damages for mental anguish and humiliation, physical pain and suffering, disfigurement, physical disability, and past and future lost wage earning capacity as a result of Defendant's discriminatory practices.

### **Prayer for Relief**

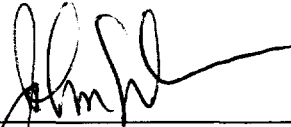
WHEREFORE, Intervenor respectfully requests that this Court enter judgment:

- (a) Declaring that the acts and practices complained of herein are in violation of Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1871, as amended;

- (b) Enjoining and permanently restraining these violations of Title VII of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1871, as amended;
- (c) Directing Defendant to take such affirmative steps as are necessary to insure that the effects of these unlawful employment practices are eliminated and do not continue to affect Intervenors' employment opportunities;
- (d) Directing Defendant to promote Intervenors, placing them in the position they would have occupied but for Defendant's unlawful actions and making them whole for all the earnings they would have received but for Defendant's unlawful actions including, but not limited to, wages, bonuses, pension and other lost benefits;
- (e) Awarding Intervenors damages for irreparable injury, monetary damages, and damages for mental anguish and humiliation, physical pain and suffering, disfigurement, physical disability, and past and future lost wage earning capacity as a result of Defendant's discriminatory practices.
- (f) Directing Defendant to pay Intervenors such additional amounts in punitive damages as may be available under law and awarded by the jury;
- (g) Awarding Intervenors the costs of this action, together with reasonable attorney's fees, and pre- and post-judgment interest, and
- (h) Granting such other and further relief as this Court deems necessary and proper.

Respectfully submitted,

REAUD, MORGAN & QUINN, INC.  
801 Laurel Street  
Post Office Box 26005  
Beaumont, Texas 77720-6005  
Telephone: (409)838-1000  
Telecopier: (409)833-8236

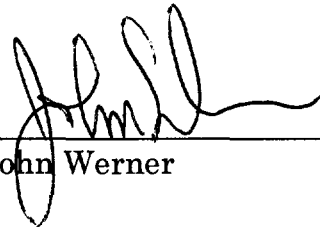


By: John Werner  
Texas Bar No. 00789720

Lawyers for Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of JANUARY, 2000, I have served a true copy of the above and foregoing on the adverse parties by forwarding a copy of same to all opposing counsel herein.



John Werner