



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS
100 EAST HOUSTON STREET
MARSHALL, TX 75670

November 25th, 2014

CHAMBERS OF
Rodney Gilstrap
UNITED STATES DISTRICT JUDGE

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The U. S. Court of Appeals
Fifth Judicial Circuit
600 S. Maestri Place
New Orleans, LA 70130

Via Email

RE: District Court Response to Docket No.
14-41297; Petition for Writ of Mandamus;
In Re: Trinity Industries, Inc. et al;
USDC No. 2:12-cv-0089

Dear Circuit Judges:

The District Court appreciates your invitation to respond to the most recent mandamus petition filed by Trinity Industries, Inc. and Trinity Highway Products, LLC (jointly "Trinity"). Please find my comments below.

As this Court is aware, Trinity has now filed two petitions for a writ of mandamus in as many months. In its first petition, Trinity asked the Circuit Court to grant interlocutory review of the District Court's denial of Trinity's motion for judgment as a matter of law and subsequent motions to reconsider. The procedural history—and procedural defects—of that first petition are known

to the Circuit Court, and will not be repeated here.¹ Ultimately, the Circuit Court denied Trinity's first petition and declined to stay the then-imminent trial.

Following the Circuit Court's decision, the above-captioned action was tried before a jury. On October 20, 2014, the jury returned a unanimous verdict, finding that both Trinity Industries and Trinity Highway Products violated the False Claims Act, and awarding damages of \$175,000,000 to the United States. Following the jury's verdict, Trinity filed its second mandamus petition, which is substantively identical to the first. Now, as then, Trinity argues that the District Court erred in denying its various motions for judgment as a matter of law under this Court's decision in *U.S. v. Southland Management Corp.*, 326 F.3d 669 (5th Cir. 2003).

A petition seeking review and reversal of the trial court's rulings via mandamus, rather than through a direct appeal, is extraordinary in any circumstance. Trinity's petition—which seeks interlocutory review of the denial of a motion for summary judgment, after the Circuit Court denied an identical pre-trial petition, and after the jury returned a unanimous verdict—is nothing less than extreme.

Although the rationale for the District Court's ruling as to Trinity's original motion for summary judgment is fully contained in the pre-trial transcript, the District Court is mindful of this Court's observations regarding the absence of a written opinion considering Trinity's position under *Southland*. However, the

¹ To summarize, Trinity first raised the issues now contained in its second petition in a motion to dismiss, which the District Court denied. Trinity reiterated the same arguments in its motion for summary judgment, which was also denied. After a 44 day delay, Trinity filed a "Rule 16" motion for reconsideration, which the District Court also denied. Trinity subsequently filed its first petition for a writ of mandamus.

complete record, as well as the issues regarding the application of *Southland* thereto, are now before the District Court in the form of Trinity's motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b).

Trinity filed its Rule 50(b) motion eight days ago. A response from the Relator is presumably imminent, and briefing will be complete within weeks. The District Court intends to give thorough consideration to the parties' submissions and issue a written, reasoned opinion with all possible expediency. Trinity may prevail on its Rule 50(b) motion for judgment as a matter of law; or, it may not. Regardless of the outcome, the District Court is confident that whichever party fails to carry the day will appeal this action to the Circuit Court in the normal course, and that such appeal will be before the Circuit Court in a short period of time. This mitigates against a decision by this Court to employ a post-verdict mandamus proceeding.

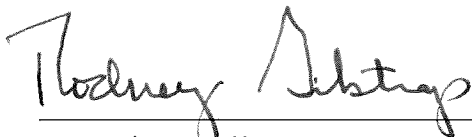
Further, it is undisputed that Trinity faces serious ramifications if the jury's verdict stands and it is held liable for knowingly submitting false or fraudulent claims to the government. However, this severity mirrors the grave allegations leveled against Trinity—allegations that a jury has heard and accepted as true. The importance of this action dictates that the District Court have the opportunity to give Trinity's Rule 50(b) motion full consideration, affording due weight to the parties' competing arguments regarding the controlling law, with the benefit of the now-complete factual record. The importance of this case likewise weighs against the grant of the mandamus petition, seeking exceptional and extraordinary relief, so that the Circuit Court may take up this matter after it has

been fully addressed at the trial court level within the context of Rule 50(b) and with the benefit of a complete record.

Additionally, while the District Court is concerned by many, if not most, of Trinity's characterizations in the pending petition (and the arguments that flow from such characterizations), the District Court is confident that both parties will address the same with specificity during a direct appeal. The District Court therefore declines to address the specific issues raised in Trinity's petition, with one exception: the District Court does feel compelled to observe that Trinity's request seeking a post-verdict stay from the Circuit Court has never been presented to the District Court.

Should the Circuit Court desire clarification as to any of the above or further input from the District Court, please advise.

Very truly yours,

A handwritten signature in black ink, reading "Rodney Gilstrap", written over a horizontal line.

J. Rodney Gilstrap
United States District Judge

Cc: Counsel of Record