

TRINITY INDUSTRIES INC

Form SC TO-T/A

January 14, 2010

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**SCHEDULE TO/A**

**Tender Offer Statement under Section 14(d)(1) or 13(e)(1)**

**of the Securities Exchange Act of 1934**

**(Amendment No. 1)**

**QUIXOTE CORPORATION**

*(Name of Subject Company (Issuer))*

**THP MERGER CO.**

*(Offeror)*

**a wholly-owned subsidiary of  
TRINITY INDUSTRIES, INC.**

*(Parent of Offeror)*

*(Names of Filing Persons (identifying status as offeror issuer or other person))*

**Common Stock, \$0.01<sup>2</sup>/<sub>3</sub> par value per share (including the associated**

**Series C Junior Participating Preferred Stock Purchase Rights)**

*(Title of Class of Securities)*

**749056107**

*(CUSIP Number of Class of Securities)*

**S. Theis Rice, Esq.**

**Chief Legal Officer**

**Trinity Industries, Inc.**

**2525 Stemmons Freeway**

**Dallas, Texas 75207**

**Telephone: (214) 631-4420**

*(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)*

*Copy to:*

**Mary R. Korby, Esq.**

**Weil, Gotshal & Manges LLP**

**200 Crescent Court, Suite 300**

**Dallas, Texas 75201**

**Telephone: (214) 746-7700**

**CALCULATION OF FILING FEE**

**Transaction Valuation(1)**

\$61,120,678

**Amount of Filing Fee(2)**

\$4,357.90

- (1) Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated by

adding  
(i) 9,333,867  
shares of  
common stock,  
par value  
\$0.01<sup>2</sup>/<sub>3</sub> per  
share, of  
Quixote  
Corporation,  
outstanding  
multiplied by  
the offer price  
of \$6.38 per  
share,  
(ii) 233,000  
shares of  
common stock,  
par value  
\$0.01<sup>2</sup>/<sub>3</sub> per  
share, of  
Quixote  
Corporation,  
which were  
subject to  
issuance  
pursuant to the  
exercise of  
outstanding  
options that  
have an exercise  
price of less  
than \$6.38,  
multiplied by  
\$6.38 and  
(iii) 210,166  
shares of  
common stock,  
par value  
\$0.01<sup>2</sup>/<sub>3</sub> per  
share, of  
Quixote  
Corporation,  
which were  
subject to  
issuance  
pursuant to the  
exercise of  
outstanding  
options that  
have an exercise  
price equal to or

greater than \$6.38 and are not held by directors and certain executive officers of Quixote Corporation, multiplied by \$0.40 (the actual consideration payable in respect of such options). 1,621,622 shares of common stock, par value \$0.01<sup>2</sup>/<sub>3</sub> per share, of Quixote Corporation reserved for issuance upon conversion of the 7% convertible notes of Quixote Corporation due 2025 have been excluded from the calculation because the conversion price of those notes (\$25.90 per share) exceeds the offer price of \$6.38. The calculation of the filing fee is based on Quixote Corporation's representation of its capitalization as of December 29, 2009.

(2) The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934 by multiplying the transaction value by 0.00007130.

␣ Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

Amount Previously Paid: \$4,357.90  
Form of Registration No.: Schedule TO

Filing Party: Trinity Industries, Inc.  
Date Filed: January 7, 2010

∘ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

- ␣ Third-party tender offer subject to Rule 14d-1.
- ∘ Issuer tender offer subject to Rule 13e-4.
- ∘ Going-private transaction subject to Rule 13e-3.
- ∘ Amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer. ∘

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**Item 11. Additional Information**

**Item 12. Exhibits**

**Signature**

EX-99.(a)(5)(G)

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This Amendment No. 1 to the Tender Offer Statement on Schedule TO (this Amendment), filed with the Securities and Exchange Commission (the SEC) on January 14, 2010, amends and supplements the Tender Offer Statement on Schedule TO filed on January 7, 2010 (the Schedule TO), and relates to the offer by THP Merger Co., a Delaware corporation (the Purchaser), to purchase all of the outstanding shares of common stock, \$0.03 par value (including the associated preferred stock purchase rights, the Shares), of Quixote Corporation, a Delaware corporation (Quixote), at a purchase price of \$6.38 per Share (the Offer Price), net to the seller in cash, without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 7, 2010 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached to the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively (which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, collectively constitute the Offer). The Schedule TO (including the Offer to Purchase) filed with the SEC by Trinity Industries, Inc. (Parent), the parent of Purchaser, on January 7, 2010, and the Solicitation/Recommendation Statement on Schedule 14D-9 filed with the SEC by Quixote on January 7, 2010 (and any further amendments thereto), contain important information about the Offer, all of which should be read carefully by Quixote stockholders before any decision is made with respect to the Offer.

Documentation relating to the Offer has been mailed to Quixote's stockholders and may be obtained at no charge at the website maintained by the SEC at [www.sec.gov](http://www.sec.gov) and may also be obtained at no charge by directing a request by mail to D.F. King & Co., Inc., 48 Wall Street, New York, New York 10005, or by calling toll-free at (800) 290-6427.

All information set forth in the Offer to Purchase and the related Letter of Transmittal is incorporated by reference in answer to Items 1 through 12 in the Schedule TO, except those items as to which information is specifically provided herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Offer to Purchase.

**Item 11. Additional Information.**

Item 11 (a)(5) of the Schedule TO is hereby amended and supplemented by replacing None. with the following paragraph:

On January 13, 2010, a lawsuit related to the Offer and the Merger was filed in the Circuit Court of Cook County, Illinois County Department, Chancery Division, *Superior Partners, on Behalf of Itself and All Others Similarly Situated vs. Leslie J. Jezuit, Bruce Reimer, Daniel P. Gorey, Robert D. van Roijen, Lawrence C. McQuade, Duane M. Tyler, Clifford D. Nastas, Quixote Corporation and Trinity Industries, Inc.* (Cause No. 10-CH-01613). The action is brought by Superior Partners, which claims to be a stockholder of Quixote, on its own behalf and on behalf of all others similarly situated, and seeks certification as a class action on behalf of all Quixote's stockholders, except the defendants and their affiliates. The lawsuit names Quixote Corporation, each of Quixote's directors and Parent as defendants. The lawsuit alleges, among other things, that Quixote directors breached their fiduciary duties by (i) causing Quixote to enter into the Merger Agreement even though there was an unfair process and inadequate consideration; (ii) receiving certain personal compensation that they would not otherwise receive at this time absent the Merger; and (iii) providing materially misleading and/or failing to provide certain material information in the Recommendation Statement. In addition, the lawsuit alleges that Parent aided and abetted such alleged breaches of fiduciary duties by Quixote's directors. Based on these allegations, the lawsuit seeks, among other relief, (i) compensatory and/or rescissory damages as allowed by law and (ii) interest, attorney's fees, expert fees and other costs in an amount to be determined. A copy of the complaint filed by Superior Partners is filed as Exhibit (a)(5)(G) to the Schedule TO and is incorporated herein by reference.

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**Item 12. Exhibits.**

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit:

(a)(5)(G) Complaint captioned Superior Partners, on Behalf of Itself and All Others Similarly Situated vs. Leslie J. Jezuit, Bruce Reimer, Daniel P. Gorey, Robert D. van Roijen, Lawrence C. McQuade, Duane M. Tyler, Clifford D. Nastas, Quixote Corporation and Trinity Industries, Inc., filed on January 13, 2010, in the Circuit Court of Cook County, Illinois County Department, Chancery Division

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**SIGNATURE**

After due inquiry and to the best of the knowledge and belief of each of the undersigned, each of the undersigned hereby certifies that the information set forth in this statement is true, complete and correct.

**TRINITY INDUSTRIES, INC.**

By: /s/ William A. McWhirter II  
Name: William A. McWhirter II  
Title: Senior Vice President and Chief  
Financial Officer

**THP MERGER CO.**

By: /s/ James E. Perry  
Name: James E. Perry  
Title: Vice President, Treasurer and  
Assistant Secretary

Date: January 14, 2010