

Takata Airbag Recall Falls Short, Plaintiffs Lawyers Say

Amanda Bronstad, The National Law Journal

Plaintiffs lawyers praised Takata Corp.'s admission on Tuesday that a defect was causing its airbags to spontaneously rupture, but they insisted that the company still hasn't gotten to the root of the problem, which they hope to reveal through discovery in more than 100 pending cases.

The U.S. National Highway Traffic Administration announced the record recall of 34 million vehicles to replace defective inflators that could cause Takata airbags to explode. The announcement doubles last year's regional recalls involving 10 automobile manufacturers, including Honda, BMW and Nissan. It's also the first time that Takata, whose vice president for global quality assurance, Hiroshi Shimizu, [appeared](#) on Capitol Hill last fall, has admitted that a defect exists. The company says it continues to investigate a single cause of the problem.



Takata airbag components presented before a U.S. Senate Committee on Commerce, Science, and Transportation at a hearing on Nov. 20.

Photo: Diego M. Radzinski/NLJ

Takata's admission of a defect isn't the same as admitting liability, said Peter Prieto, of Miami's Podhurst Orseck, chair lead counsel for the plaintiffs in more than 100 lawsuits coordinated before U.S. District Judge Federico Moreno in the Southern District of Florida. In those lawsuits, plaintiffs lawyers pin the blame on Takata's use of ammonium nitrite, a cheaper but more volatile chemical, in its airbag inflators.

"It's a big announcement in that they finally admitted that their inflators are defective," Prieto said. "They're admitting certain things, but definitely not admitting that the root cause is the use of ammonium nitrate, and we say that's the root cause."

NHTSA's announcement didn't identify which cars and trucks would be recalled. Takata Corp.'s TK Holdings Inc. subsidiary agreed to cooperate with NHTSA's investigation as part of a consent order.

"We are pleased to have reached this agreement with NHTSA, which presents a clear path forward to advancing safety and restoring the trust of automakers and the driving public," Shigehisa Takada, chairman and chief executive

officer of Takata Corp., said in a prepared statement on Tuesday. “We have worked extensively with NHTSA and our automaker customers over the past year to collect and analyze a multitude of testing data in an effort to support actions that work for all parties and, most importantly, advance driver safety.”

In its announcement, NHTSA said test results and engineering reports indicated that moisture in the inflators over long periods of time might be causing the defect. But plaintiffs attorneys insist that Takata continues to make inflators with ammonium nitrate, which is explosive and dangerous, including the replacements being installed in recalled vehicles.

“It’s wonderful for the public, but it’s still not wide enough,” said Kevin Dean, of Mt. Pleasant, S.C.-based Motley Rice, of the recall. Dean has filed eight lawsuits on behalf of injured victims. “The answer lies in disclosures from these manufacturers and Takata about how many vehicles have ammonium nitrite. Until we take ammonium nitrite off the market, everyone remains at risk.”

David Bernick, a partner in the New York office of Dechert who is representing Takata, did not respond to a request for comment.

The announcement comes as plaintiffs lawyers are gearing up for discovery in civil litigation over the airbag failures. “Obviously, the less things we have to prove to a jury the better,” said Rich Newsome, senior partner of Newsome Melton in Orlando, who has assembled a coalition of plaintiffs lawyers representing about 20 alleged airbag victims, all with injuries, many of whom have filed cases against Takata in state courts, including those in Florida, California and Texas.

Newsome, who has filed four lawsuits, said he hoped to get discovery this summer from Takata and Honda. In the coordinated actions in federal court, plaintiffs attorneys have requested that Takata and the automakers produce all the documents they’ve provided to NHTSA, Congress and the Department of Justice. They also filed their first consolidated complaints last month. Takata and the automaker defendants are due to respond by June 19. In one complaint, filed on behalf of people who were injured or died in accidents attributed to the airbag defect, lawyers cited at least six deaths and 139 injuries, including those caused by metal shrapnel.

The other complaint was brought on behalf of consumers asserting economic damages, though Prieto said he was considering amending that given the expanded recalls.

“The loss to all these consumers is going to be huge,” Prieto said. “We don’t have a number yet, but the loss for potentially 34 million vehicle owners is going to be tremendous.”