

FLORIDA LAW REVIEW

Takata's Air-Bag Recall Falls Short, Plaintiffs Lawyers Say

by Amanda Bronstad
abronstad@alm.com

Plaintiffs lawyers praised Takata Corp.'s admission that a defect was causing its air bags 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 Safety Administration announced the record recall of 34 million vehicles to replace defective inflators that could cause Takata air bags 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's admission of a defect isn't the same as admitting liability, said Peter Prieto of Miami's Podhurst Orseck, 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 nitrate, a cheaper but more volatile chemical, in its air-bag inflators.

"It's a big announcement in that they finally admitted that their inflators are defective," Prieto said. "They're admitting



DIEGO M. RADZINSCHI

The U.S. National Highway Traffic Safety Administration announced the record recall of 34 million vehicles to replace defective inflators that could cause Takata air bags to explode.

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's TK Holdings Inc. subsidiary agreed to cooperate with NHTSA's investigation as part of a consent order.



Prieto

"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, said in a 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 Mount Pleasant, South Carolina-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 nitrate. Until we take ammonium nitrate 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 air-bag 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 air-bag 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.

"The loss to all these consumers is going to be huge," Prieto said.

Amanda Bronstad reports for the National Law Journal, an ALM affiliate of the Daily Business Review.