

Takata, Honda Can't Shake Air Bag Defect MDL

By *Sindhu Sundar*

Law360, Miami (December 2, 2015, 4:32 PM ET) -- A Florida federal judge on Wednesday rejected a bid by Takata and Honda to toss an amended complaint in the multidistrict litigation over allegedly defective air bag inflators linked to eight deaths, finding that injured victims and drivers claiming economic loss can proceed with their racketeering claims.

U.S. District Judge Federico A. Moreno said he was denying in part the motions to dismiss by Takata Corp. and AmericanHonda Motor Co. Inc., finding the plaintiffs had pled enough facts in their complaint about communications between the defendants that reflected Takata's alleged knowledge of the air bag defect and its alleged concealment of the defect.

"The complaint includes factual allegations of racketeering activity ... including pages of references to specific communications among defendants, that the defendants, acting as an enterprise, knew of a defect in the Takata airbag, knew that Takata had concealed the defect, and defrauded consumers by selling and servicing vehicles for more money than consumers would have paid had the vehicle not contained a defective airbag," he said in his ruling.

"Plaintiffs have alleged sufficient facts ... to survive a motion to dismiss," he said.

The MDL claims center around air bags supplied by Takata that have been recalled worldwide because of a highly publicized defect that car buyers claim makes its inflators more prone to explode, according to court documents. They claim that the defect is linked to use of inexpensive but volatile ammonium nitrate that causes the air bags to explode, particularly in humid conditions, sometimes spewing chemicals or shrapnel at passengers.

At least eight deaths and more than 139 injuries have been attributed to the company's air bags, they have claimed.

Judge Moreno, who said that Wednesday's order was the "first in a series of orders on the motions to dismiss **heard** at oral argument," in October, also preserved claims that Honda and Takata had conspired to keep their knowledge of the defect under wraps while they conducted their own secret investigation of the defect.

The plaintiffs had alleged a roughly decadelong scheme by Takata and Honda where they communicated with each other about the defect and the findings of their own investigations, and in doing so, "delayed and/or prevented the release of inculpatory informations, misled regulatory authorities, and maintained a consistent public posture," about the status of the vehicles, according to their complaint.

Judge Moreno found Wednesday that the complaint had included enough allegations about the communications between Takata and Honda to support such claims.

Wednesday's ruling did not indicate what claims had been rejected.

“We are pleased that the court denied dismissal of the federal RICO claims, and that we can now develop these claims through discovery,” Peter Prieto of Podhurst Orseck, chair lead counsel for the plaintiffs, said in a statement Thursday. “We always believed that they were well pled. This is a significant and positive step forward for our case and our clients.”

The plaintiffs are represented by chair lead counsel Peter Prieto of Podhurst Orseck, the personal injury plaintiffs are represented by lead counsel Curtis Miner of Colson Hicks Eidson, the economic damages plaintiffs are represented by co-lead counsel David Boies of Boies Schiller and Flexner and Todd Smith of Power Rodgers and Smith.

The plaintiffs' steering committee is represented by James Cecchi of Carella Byrne Cecchi Olstein Brody & Agnello; Elizabeth Cabraser of Lief Cabraser Heimann & Bernstein, and Roland Tellis of Baron & Budd.

Takata is represented by Stephen J. Krigbaum of Carlton Fields Jordan Burt PA and David Bernick, Hope S. Freiwald and Benjamin R. Barnett of Dechert LLP.

American Honda Motor Co. Inc. is represented by Michael L. Mallow, Eric S. Mattson and Michael C. Andolina of Sidley Austin LLP and Mitchell Widom of Bilzin Sumberg Baena Price & Axelrod LLP.

BMW of North America LLC is represented by Carey S. Villeneuve, Rosemary J. Bruno and Christopher J. Dalton of Buchanan Ingersoll & Rooney PC and Eric Y. Kizirian of Lewis Brisbois Bisgaard & Smith LLP.

Ford Motor Co. is represented by E. Colin Thompson, Joel A. Dewey, Jeffrey M. Yeatman and J. Trumon Phillips of DLA Piper LLP.

Mazda Motor of America Inc. is represented by Cari K. Dawson, Scott A. Elder and Daniel C. Norris of Alston & Bird LLP and Michael R. Tein and Guy A. Lewis of Lewis Tein PL.

Nissan North America Inc. is represented by Kimberly A. Cook, E. Paul Cauley Jr., S. Vance Wittie and Ramon A. Abadin of Sedgwick LLP.

Subaru of America Inc. is represented by Stanley H. Wakshlag and Robert D.W. Landon III of Kenny Nachwalter PA and Jeffrey L. Chase and Michael Gallub of Herzfeld & Rubin PC.

Toyota Motor Sales USA Inc. is represented by John C. Seipp Jr. and Donald A. Blackwell of Seipp Flick & Hosley, Terri S. Reiskin of Dykema Gossett PLLC, and Robert M. Brochin of Morgan Lewis & Bockius LLP.

The case is *Dunn et al. v. Takata Corp. et al.*, case number 1:14-cv-24009, in the U.S. District Court for the Southern District of Florida.