

MDL Judge Keeps Alive Air Bag Claims Against Takata, Honda

Celia Ampel, Daily Business Review

Vehicle owners can now begin collecting documents and taking depositions to support their claims that Takata Corp. and Honda Motor Co. conspired to hide the risks of allegedly faulty air bags installed in their cars.

U.S. District Judge Federico Moreno in Miami on Wednesday kept alive federal racketeering claims the two companies had moved to dismiss.

The 107 consumers and four auto recyclers who are plaintiffs in the multidistrict litigation sued over Takata air bags that used ammonium nitrate. The buyers claimed they would not have bought their cars if they knew the air bags might kill or injure them with flying shrapnel, and the stigma attached to the air bags diminished resale values.

The car owners also allege Takata and Honda secretly shared information about air bag deployment injuries and misled regulators about the number of vehicles with allegedly defective air bags and the safety risks they posed.

Moreno decided the plaintiffs established plausible claims for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Magnuson-Moss Warranty Act. A successful civil RICO claim can mean a big windfall with the law allowing triple damages.

The judge also denied Takata's motion to strike the putative national class action as premature. Takata argued the court could not evaluate the nationwide claims under the law of one state, and it would be inefficient to apply the laws of 30 states.

"This is a significant and positive step forward for our case and our clients," said Peter Prieto, chair lead counsel for the plaintiffs and a Podhurst Orseck partner in Miami. **"We are pleased that the court denied dismissal of the federal RICO claims and that we can now develop these claims through discovery."**

Takata attorney David Bernick, a partner at Dechert in New York, did not respond to a request for comment by deadline.

American Honda Motor Co. spokesman Chris Martin said Moreno's decision to let the claims move forward was expected at this early stage in the litigation.

"Honda believes that plaintiffs' claims against Honda are without merit, but we are not surprised by the court's ruling today on the RICO claim," Martin said in a statement.

The company is confident the RICO claim against it will be dismissed based on the evidence, including Takata internal documents recently given to Honda and the plaintiffs, Martin said.

"Honda looks forward to the opportunity to properly challenge plaintiffs' claims on the full record during the later stages of the litigation," he said.

The decision followed oral arguments Oct. 23. Moreno said other orders would follow on issues argued the same day. The hearing dealt with defense motions to dismiss the plaintiffs' 453-page second amended consolidated class action complaint, which includes claims of fraudulent concealment, unjust enrichment and breach of implied warranty against several automakers.

Prieto said the plaintiffs are hoping for a trial in April 2017. Manufacturers named in the lawsuits include BMW, Ford, Honda, Mazda, Nissan, Subaru and Toyota.

The economic loss claims by car owners are being heard separately from personal injury claims. Takata air bag explosions have been blamed in seven deaths and nearly 100 injuries in the U.S.

Japan-based Takata announced in May that more than 34 million U.S. vehicles would be recalled because of the air bags. A list of recalled vehicles can be found at safercar.gov.

Last month, the National Highway Traffic Safety Administration imposed the largest civil penalty in its history on Takata, ordering the company to pay \$200 million. The agency also required Takata to phase out the manufacture and sale of inflators that use ammonium nitrate as a propellant.

"For years, Takata has built and sold defective products, refused to acknowledge the defect and failed to provide full information to NHTSA, its customers or the public," Transportation Secretary Anthony Foxx said Nov. 3 when the penalty was announced. "The result of that delay and denial has harmed scores of consumers."

Firms representing the plaintiffs in the economic loss action are Podhurst Orseck; Colson Hicks Eidson; Power Rogers & Smith; Boies, Schiller & Flexner; Baron & Budd; Carella Byrne Cecchi Olstein Brody & Agnello; and Lief Cabraser Heimann & Bernstein.

Defense firms are Dechert; Sidley Austin; Bilzin Sumberg Baena Price & Axelrod; Hogan Lovells; Lewis Tein; Sedgwick; Herzfeld & Ruben; Kenny Nachwalter; Dykema Gossett; Alston & Bird; Seipp Flick & Hosley; DLA Piper; Buchanan Ingersoll & Rooney; and Lewis Brisbois Bisgaard & Smith.