

How Takata's \$1B Settlement Could Impact Civil Class Action

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Takata airbag components presented before a U.S. Senate Committee on Commerce, Science, and Transportation at a hearing on Nov. 20, 2014. Photo: Diego M. Radzinski/ALM

Takata Corp.'s \$1 billion settlement with the U.S. government over its defective air bags will not hinder the nationwide class action against the company and several automakers, lead plaintiffs counsel in the Miami-based civil case said.

As part of the settlement announced Friday, Takata [agreed to plead guilty](#) to wire fraud in Detroit federal court and to pay \$850 million to automakers affected by air bag recalls, \$125 million to injured victims and a \$25 million fine. The company will retain a compliance monitor for three years, said U.S. Attorney Barbara McQuade of the Eastern District of Michigan.

The court has appointed Washington attorney Kenneth Feinberg as special master to oversee the restitution. Feinberg, with the Law Offices of Kenneth R. Feinberg, has administered compensation funds for victims of Agent Orange, 9/11 and the BP oil spill.

An indictment was also unsealed against three former executives of the Japanese company on wire fraud and conspiracy charges for allegedly concealing the air bags' defect from automakers.

"For more than a decade, Takata repeatedly and systematically falsified critical test data related to the safety of its products, putting profits and production schedules ahead of safety," said Andrew Weissmann, chief of the U.S. Department of Justice's criminal fraud section.

A faulty inflator found in some Takata air bags caused the safety devices to explode when they deployed, expelling shrapnel into the car. The defect was linked to 16 deaths and more than 180 injuries, bringing about the largest automotive recall in U.S. history.

Takata admitted as part of the criminal settlement that it knew in 2000, a few years after it began developing the air bag inflators, that some of them had ruptured during testing and did not meet automakers' specifications. The company submitted false reports that concealed the problem from Takata customers, according to the admissions.

The executives and other employees involved in falsifying the data were not disciplined until 2015, years after senior executives knew about the fraud, according to the Department of Justice.

Takata spokesman Jared Levy did not respond to a request for comment.

U.S. District Judge Federico Moreno presides over the civil litigation in Miami federal court and could decide to admit the guilty plea as evidence in the civil proceeding, bolstering the plaintiffs' case against Takata.

Peter Prieto, a Podhurst Orseck partner in Miami, leads the plaintiffs' legal team in the multidistrict litigation against Takata and automakers BMW, Honda, Mazda, Mitsubishi, Nissan, Subaru and Toyota. The case includes personal injury claims and a separate set of economic loss claims on behalf of owners of cars subject to the recall.

"Takata's criminal guilty plea comes as no surprise and was expected," Prieto said. "The guilty plea also will have no adverse impact on the civil cases against the automakers in the MDL because the automakers have separate and independent civil liability to their consumers who bought their cars not from Takata but from the automakers, all of whom represented that their cars were safe."

Prieto also claims that no matter what Takata told the automakers, they knew the air bags were dangerous because the inflators used a volatile compound, ammonium nitrate, as a propellant. The defense [has argued](#) humidity and a press used in the manufacturing process were more to blame for air bag ruptures than the chemical.

[Reports](#) that Takata is considering filing for bankruptcy in the U.S. concern the plaintiffs, since the claims against Takata could be stayed in the event of a bankruptcy proceeding.

"Everyone wants Takata to survive and not file for bankruptcy, but it's something beyond our control," Prieto said.

The government's investigation of Takata had not impeded discovery in the case, although Friday's news could mean some Takata employees invoke their Fifth Amendment right during future depositions, he said.

The multidistrict litigation plaintiffs are in the midst of discovery related to all eight defendants, and no trial date has yet been set.