

Takata Plea Deal Complicates Civil Suits

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Motley Rice attorney Kevin Dean.

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Updated 2/27/17, 7:15 p.m. After this story published, U.S. District Judge George Caram Steeh accepted Takata's plea deal.

Lawyers with pending civil suits related to faulty Takata airbags are trying to put the brakes on the manufacturer's [\\$1 billion criminal plea deal](#), claiming it will end up being used as a tool to release its U.S. subsidiary and several automakers from civil liability.

Attorneys Kevin Dean, a member of Motley Rice in Mount Pleasant, South Carolina, and Thomas Willingham of Atlanta's Pope McGlamry, raised their concerns in a pair of objections filed on Monday before U.S. District Judge George Caram Steeh of the Eastern District of Michigan. Steeh held a hearing Monday on whether to preliminarily approve the Takata agreement. (Read the objections [here](#) and [here](#).)

The objections, both of which invoked their clients' rights to be heard under the Crime Victims' Rights Act, are an unusual development in a mass tort. But criminal deals involving automotive safety recalls have been [on the rise](#), with similar agreements involving Volkswagen AG, General Motors Corp. and Toyota Motor Corp.

The objecting lawyers, who represent individuals who have suffered injuries or lost relatives as a result of the exploding Takata airbags, have asked Steeh to hold off on approving the deal until a presentence report has been prepared, including potential victim impact statements.

They claim that while Takata Corp. is "falling on a sword," the plea agreement is "wrought with inaccurate, incomplete and misleading assertions of fact," many of which will be used in pending civil cases to shield its U.S. subsidiary and the automakers from liability.

"The government has unfortunately been misled and misinformed, as well as potentially had highly relevant documents withheld from it or overlooked, showing that other entities are as culpable or more so in some cases for the conduct at issue," they wrote.

It's not an entirely hypothetical argument. In a status report filed this month in multidistrict litigation in Miami, seven automakers assert that the Jan. 13 plea agreement, under which Takata agreed to pay \$850 million in restitution, "significantly undermines" related civil claims brought on behalf of consumers.

"The plea agreement confirms, among other things, that Takata engaged in a fraudulent scheme to keep the automotive defendants from knowing what Takata knew about the inflators and their potential to rupture," they wrote.

Peter Prieto, lead counsel in the multidistrict litigation, fired back in his own status report that the automotive defendants "overstate the significance of Takata's recent plea agreement to these proceedings."

"The evidence plaintiffs already have collected in this litigation establishes that the automotive defendants, staffed with teams of sophisticated engineers, were far from innocent, unsuspecting victims, as they now claim to be," wrote Prieto of Miami's Podhurst Orseck.

For its part, Takata's U.S. subsidiary, TK Holdings Inc., based in Dearborn, Michigan, said the plea deal "should have a limited (if any) impact" on the multidistrict litigation given that it says nothing about civil liability.

A hearing is scheduled Tuesday before U.S. District Judge Federico Moreno of the Southern District of Florida.