

# Takata Pleads Guilty To Wire Fraud Over Drivers' Objections

By [Emily Field](#)

Law360, New York (February 27, 2017, 6:49 PM EST) -- [Takata Corp.](#) pled guilty to wire fraud in Michigan federal court on Monday and agreed to pay \$1 billion over its potentially fatal air bag inflators, despite objections from drivers suing Takata and automakers who say that the car makers had also long known about the defect.

The Japanese auto parts maker entered a guilty plea to one count of wire fraud before U.S. District Judge George Caram Steeh on Monday afternoon, as part of the settlement with the [U.S. Department of Justice](#) that the company [reached in January](#). The deal requires Takata to pay nearly \$1 billion for falsifying testing data and reports about its inflators and to repay anyone injured by them.

The company's air bag inflators have been linked to [at least 11 deaths](#) in the U.S. and prompted the largest auto recall in the nation's history. Takata has faced massive global recalls of its air bag inflator, which allegedly had a tendency to explode.



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The cheap but volatile ammonium nitrate that inflates the bags can misfire, especially in humid conditions, blasting chemicals and shrapnel at passengers and drivers.

Kevin Dean of [Motley Rice LLC](#), who is representing drivers in [multidistrict litigation in Florida](#) over the Takata airbags, appeared in the Detroit court to object to the plea agreement on grounds that it didn't address the culpability of TK Holdings Inc., Takata's U.S. subsidiary, and that the DOJ had been misled in its investigation.

The drivers in the civil litigation claim that automakers Ford, Nissan, Honda, Toyota and BMW knew that the air bag inflators weren't safe for years, but still kept equipping their cars with the "ticking time bombs" because they were cheaper than alternatives, according to a status report filed in the Florida litigation and attached to their objection in the Detroit court.

"The judge was thoughtful, very careful and deliberate and listened to our arguments, but unfortunately he overruled the objection in favor of the plea deal which he said was in the best interest of the parties and the victims," Dean told Law360 on Monday.

Takata's scheme started sometime around 2000 and ran for at least 15 years, with the company fraudulently

persuading customers to buy air bag systems by giving them information that hid the accurate test results for the air bag inflators, according to the DOJ. To aid that plan, Takata made an interstate wire transfer of about \$43,000 from Pennsylvania to Detroit, the DOJ said.

In their objection, the drivers said that the plea agreement uses the vague term of “victim original equipment manufacturers,” which every automaker currently involved in the MDL and other state suits would try to use to shield itself from liability, when evidence so far clearly shows the opposite.

However, the judge said during the hearing that the plea agreement will not affect the liability of the car makers in the civil litigation, Dean said.

“The judge made clear in the courtroom it was not a shield,” Dean said.

Honda’s internal documents and emails show that it chose Takata inflators because they were relatively inexpensive, according to the Florida filing.

But during testing in 1999 and 2000 at its own facilities, two of the inflators ruptured — and in 2004, a decade before the national recall, the drivers say Honda learned about a rupture in Alabama that severely injured the driver.

The drivers levied similar accusations against the other automakers, such as that Ford picked Takata’s inflators over the objections of its own inflator expert, who was opposed to the use of ammonium nitrate because it is sensitive to moisture, according to the filing.

“Ford overrode the objections of its own inflator expert because Takata was apparently the only supplier that could provide the amount of inflators that Ford needed — as one document states, Ford had ‘a gun to its head so it had to accept ammonium nitrate,’” the drivers said. “This ‘gun’ was of Ford’s own making, as it failed to secure a backup supplier for inflators.”

A representative for Toyota declined to comment on Monday; representatives for the other automakers didn’t immediately respond to requests for comment on Monday.

Under the terms of the deal, Takata also agreed to pay a \$25 million criminal fine and to establish a \$125 million restitution fund for people who were injured or will be injured by a malfunctioning Takata air bag inflator. The company also agreed to create an \$850 million fund to benefit automakers who received the falsified data and reports or who purchased the potentially dangerous inflators.

A little more than a year ago, the [National Highway Traffic Safety Administration](#) levied a \$200 million fine on Takata — its largest ever — in a deal that saw the company admit that it failed to tell the agency about the defect despite knowing about it and withholding important information.

At the time, the NHTSA estimated that the exploding inflators had caused about 98 injuries.

A Takata representative on Monday declined to comment.

The U.S. is represented by U.S. Attorney Barbara L. McQuade; Assistant U.S. Attorneys John K. Neal, Erin S. Shaw and Andrew J. Yahkind; and Andrew Weissmann, Brian K. Kidd, Christopher Jackson and Andrew R. Tyler of the DOJ.

In Michigan, Takata is represented by Lanny A. Breuer and Daniel M. Suleiman of [Covington & Burling LLP](#) and Mauricio A. Espana, Andrew J. Levander, and Hector Gonzalez of [Dechert LLP](#)

In Florida, the plaintiffs are represented by [Podhurst Orseck PA](#), [Baron & Budd PC](#), [Colson Hicks Eidson](#), [Power Rogers & Smith PC](#), [Boies Schiller & Flexner LLP](#) and [Lieff Cabraser Heimann & Bernstein LLP](#), among others.

Takata Corp. is represented by [Carlton Fields](#), Dechert LLP and Covington & Burling LLP.

The automakers are represented by [Lewis Brisbois Bisgaard & Smith LLP](#), [Buchanan Ingersoll & Rooney PC](#), Sidney Austin LLP and [DLA Piper LLP](#), among others.

The cases are United States of America v. Takata Corp., case number 2:16-cr-20810, in the U.S. District Court for the Eastern District of Michigan, and In re: Takata Airbag Products Liability Litigation, case number 1:15-md-02599, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by John Kennedy and Brian Amaral. Editing by Emily Kokoll.