

# Automakers Point To Takata's \$1B Deal In Air Bag MDL

By [Carolina Bolado](#)

Law360, Miami (February 28, 2017, 9:41 PM EST) -- Automakers embroiled in multidistrict litigation over [Takata Corp.](#)'s faulty air bags told a Florida federal court Tuesday that Takata's guilty plea and \$1 billion settlement are a “game changer” that absolves the automakers of most of their liability in the case.

In a hearing before U.S. District Judge Federico Moreno in Miami, the automakers said the \$1 billion deal over Takata's potentially fatal air bag inflators — [presented Monday](#) in federal court in Detroit — demonstrates that they did not know the air bags were faulty when they installed them in vehicles.

Marty Steinberg of [Hogan Lovells](#), who represents [Honda Motor Co.](#) Ltd. and American Honda Motor Co. Inc., said the agreement designates the automakers as victims and sets up an \$850 million fund for automakers that received falsified data and reports or that bought the potentially dangerous inflators.

“Takata admitted we have no knowledge,” Steinberg said. “The Department of Justice said we had no knowledge. We were deceived.”

Takata admitted Monday to falsifying testing data and reports about its inflators and agreed 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.

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

In addition to the \$850 million fund, Takata will also set up a \$125 million restitution fund for people who were injured or will be injured by a malfunctioning Takata air bag inflator. Takata will also pay a \$25 million criminal fine.

At the hearing Tuesday, Takata's attorney Keith Teel of [Covington & Burling LLP](#) told the court that in the civil cases, the company will not argue that it did not know that the air bags were faulty, but that it still has defenses available against some of the state law claims the plaintiffs have brought. In particular, he said, Takata has not conceded causation for the plaintiffs' injuries.

Judge Moreno urged the parties to try to settle soon, noting that the nearly \$1 billion that will soon be available because of the deal in the criminal case should satisfy many of the consumers' claims and that they could be out of luck if Takata files for bankruptcy. Peter Prieto of [Podhurst Orseck PA](#), one of the lead attorneys for the plaintiffs, called the funds “a good start” but rejected the automakers' claim that they are victims, calling it

“ludicrous.”

The plaintiffs in the MDL have objected 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 Monday.

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

Judge Moreno expressed concern about delays in the litigation, though he admitted he was partly to blame and joked that he would be giving up delays for Lent.

On Monday, Judge Moreno dismissed claims for unjust enrichment and some claims under Michigan and Ohio state laws against [Ford Motor Co.](#), and in the hearing Tuesday he told attorneys to expect orders on the final two pending motions to dismiss, against Takata and Honda, to come soon.

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](#), [Sidley Austin LLP](#) and [DLA Piper](#), among others.

The case is 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 Emily Field. Editing by Breda Lund.