

Will Takata plea deal kill civil litigation against automakers?

By [Alison Frankel](#)

Late this afternoon, the automakers Honda, Ford, Toyota, Nissan, Mazda and BMW will head to federal court in Miami to argue that a \$1 billion plea agreement between the U.S. Justice Department and the airbag maker Takata Corporation should absolve them from liability for installing dangerous Takata airbags in tens of millions of cars sold in the U.S.

Takata admitted as part of the plea that it reported incorrect airbag test results to carmakers. So according to the automakers, they are properly viewed as victims of Takata's admittedly fraudulent scheme – not as perpetrators of their own deception of car buyers. As my colleague Joe White has reported, Takata has agreed to set up an \$850 million fund to compensate automakers for the cost of replacing recalled airbags.

Owners of the cars, who are suing the automakers for economic damages in consolidated litigation, have a rather different view of the implications of Takata's guilty plea, which was approved Monday by U.S. District Judge George Steeh of Detroit. Their lawyers, led by Peter Prieto of Podhurst Orseck, claim to have plenty of evidence that carmakers were independently aware of problems with Takata's airbags.

Takata's guilty plea, car owners argued in a status report filed Monday with U.S. District Judge Federico Moreno of Miami, proves nothing at all about what the carmakers themselves knew about flaws in the airbags, which were installed even after car owners began reporting dangerous ruptures.

“Despite this knowledge, the automotive defendants continued to equip their vehicles with Takata's ticking time bombs and misrepresent to the unsuspecting public that their vehicles were safe,” car owners said in the status report.

The dispute over the automakers' liability could be worth hundreds of millions or even billions of dollars. In addition to the cost of replacing faulty airbags – which could be nearly \$8 million, according to the judge who approved Takata's guilty plea - car owners contend Honda, Ford and the other carmakers owe them damages because car buyers overpaid for defective vehicles that have diminished in value. Car owners also claimed in their latest consolidated complaint that they deserve punitive damages from automakers.

The automakers said in their status report to Miami judge Morena that Takata's admissions in its agreement with the Justice Department undermine car owners' claims for economic losses. “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,” the carmakers said in a status report filed last week. “Even before Takata's admission of guilt, plaintiffs had no way to prove they suffered actual economic loss, as the automotive defendants are offering, and will continue to offer, free replacements of recalled Takata inflators. In short, Takata's guilty plea makes the theory of plaintiffs' case even more implausible than it already was.”

Plaintiffs' lawyers said in their retort Monday that Honda and the other carmakers had overstated the impact of the Takata plea deal, which, "neither excuses the automotive defendants' own reckless, deceptive conduct nor undermines the economic loss claims asserted against them."

The filing accused carmakers of opting to use Takata airbags to save time and money. In a response issued late Monday, Honda called the allegation that cost considerations led it to use a dangerous product "categorically false," adding that Takata's airbag components were not even consistently priced lower than those of competitors. (Honda also reiterated that Takata's guilty plea belies car owners' economic loss claims.)

Takata and its U.S. subsidiary, TK Holdings, meanwhile, argued in their status report to Judge Moreno that the parent corporation's admissions in its plea deal with the government should have "limited (if any) impact" on car owners' economic loss claims in the consolidated civil litigation. (As part of the plea deal, Takata agreed to establish a \$125 million restitution fund for plaintiffs who were injured by defective airbags. Those claims are consolidated on a separate tracks from the economic loss claims.)

Plaintiffs' lawyers in the civil litigation had theorized in a pair of filings Monday before the Detroit judge overseeing the Takata criminal case that the parent corporation would try to use the plea agreement to shield its U.S. subsidiary from liability for car owners' economic losses. Instead, Takata and its subsidiary urged Judge Moreno to dismiss economic loss claims against both of them.

At the moment, both sides' jockeying over the impact of the plea agreement is just posturing. All of the defendants have moved to dismiss the latest complaint by car owners. Those motions, which preceded the Takata plea deal, are pending before Judge Moreno. It's not clear, in other words, whether the judge will even consider Takata's admissions in deciding whether to keep the economic loss cases alive.

If plaintiffs survive dismissal motions, the automaker defendants may well ask the judge to grant them summary judgment based on Takata's guilty plea. Lead counsel Prieto seems to be already primed to respond.

"What the automakers knew and when they knew it is an issue of fact," he told me. "It's for the jury to decide."

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