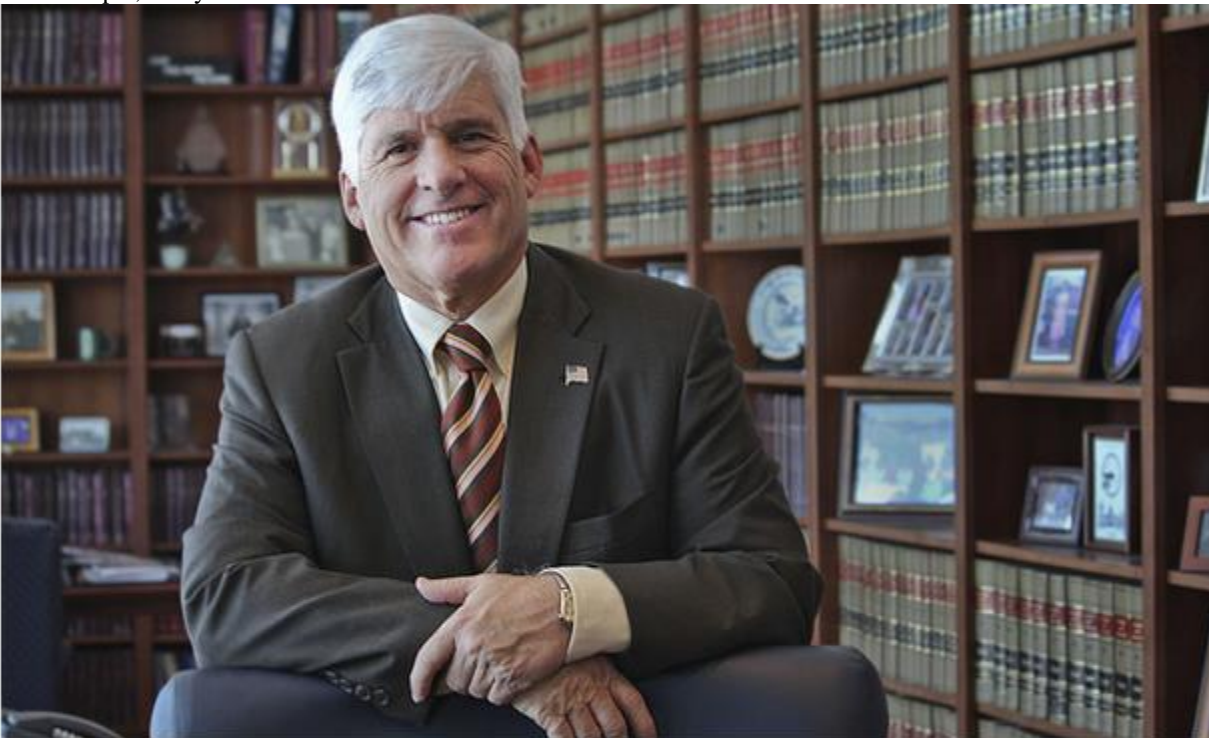


Miami Judge Aims to Advance Air Bag Litigation in Wake of Takata's Guilty Plea

Celia Ampel, Daily Business Review



U.S. District Judge Federico A. Moreno.

Photo: J. Albert Diaz/ALM

Now that Takata Corp. has [pleaded guilty to fraud](#) and agreed to pay \$1 billion for concealing a defect in millions of air bags, a Miami federal judge wants to get civil [cases against the company](#) moving.

Takata attorney Keith Teel told U.S. District Judge Federico Moreno on Tuesday that he believes "at the end of the day," settlements will resolve the entire multidistrict litigation involving personal injury and economic loss claims against [Takata](#) and [several automakers](#) who used the air bags.

"The problem is the 'end of the day' becomes the end of the year, then the end of the decade," Moreno told Teel, a Washington-based attorney with Covington & Burling, pushing the parties to agree to mediation and to head toward trial as soon as early 2018.

The plea deal, accepted by a Michigan federal judge on Monday, has shifted the civil case so that Takata and the plaintiffs align on some issues where the automaker defendants vehemently disagree.

Takata and the plaintiffs believe the plea does not change the MDL, whereas counsel for the automakers contends Takata's admissions are a "game-changer" that show the manufacturers were victims of Takata's fraud who never knew enough to mislead consumers about the air bags. The safety devices' inflators contained ammonium nitrate, an unstable chemical compound that caused some air bags to rupture and expel shrapnel, leading to the largest automotive recall in U.S. history.

"The major claims [in the MDL] require knowledge," said Marty Steinberg of Hogan Lovells in Miami, speaking on behalf of his client Honda as well as BMW, Ford, Mazda, Nissan, Subaru and Toyota. "Takata has admitted we had no knowledge."

Counsel for the plaintiffs class said discovery so far shows the automakers did know about the dangers of ammonium nitrate but continued to use the air bags because they were cheap. For instance, by the time Honda initiated a nationwide recall in 2014, Honda drivers had reported at least 77 ruptured air bags, [according to the plaintiffs](#).

"Characterizing the [automaker defendants] as victims is ludicrous," lead plaintiffs class counsel Peter Prieto of Podhurst Orseck in Miami said. "Absolutely ludicrous."

Prieto quoted Michigan U.S. District Judge George Caram Steeh, who said Monday there was nothing to suggest the automakers could not be victims of Takata's fraud and, at the same time, culpable for misleading consumers.

The lead plaintiffs lawyer also said the automakers were delaying discovery. The plaintiffs have deposed only 10 Takata fact witnesses and 18 witnesses from the automotive defendants, while the defense has deposed more than 70 class representatives, he said.

"We do want it to move faster, but it takes two to tango," Prieto told the judge.

Takata's settlement with the U.S. Department of Justice includes the creation of a \$125 million fund for those injured by air bags that exploded. The fund will be administered by a special master and will likely motivate some of the personal injury plaintiffs in the MDL to drop their cases, Teel said Tuesday.

But Teel said a large chunk of the settlement, an \$850 million fund for the automakers who were Takata's customers, will not materialize unless the Japanese company is sold. That could take up to a year, and it's possible Takata could file for bankruptcy.

But if the \$850 million does come through, Moreno suggested the automakers could choose to use it to settle economic loss claims for 40 million consumers who, through the class representatives, allege their cars lost value because of the defective air bags.

Steinberg did not address that possibility, remaining adamant that the automakers would not have bought Takata air bags if they had accurate information about the inflators, an admission included in Takata's statement of facts entered with the Michigan court.

"We were deceived," Steinberg said. "We're not pointing the finger — they've admitted it."