

The Air Bag Litigation Begins

Suits target component maker, auto companies.

Amanda Bronstad, The National Law Journal

Some of the nation's most prominent plaintiffs firms, many of them veterans of litigation against Toyota Motor Corp. and with ignition-defect lawsuits pending against General Motors Co., have a fresh target: Air bag manufacturer Takata Corp.

Takata has come under scrutiny from federal regulators and Congress over a defect that could cause its air bags to explode, pelting drivers with metal shrapnel. About 7.8 million U.S. cars and trucks made by 10 auto companies have been recalled.

At least three nationwide class actions have been filed against Takata, its U.S. subsidiaries and carmakers alleging a defect in the air bag inflator contributed to at least four deaths. Two suits have been filed in federal courts on behalf of injured drivers. Additional plaintiffs firms are investigating the matter.

As with GM's ignition switch recalls, "you had reports of people being injured in ways that called into question the safety of the vehicle and the equipment — and nothing being done about it for years," said Steve Berman, managing partner of Seattle's Hagens Berman Sobol Shapiro, who filed a nationwide class action on Oct. 30 against Takata and Honda Motor Co. Ltd. He is leading the ignition-switch litigation and obtained a \$1.6 billion consumer settlement with Toyota over its sudden acceleration recalls. "Then, all of a sudden, you have millions and millions of cars being recalled," Berman said.

Although there had been previous recalls over Takata air bags, their scope increased substantially in October, when the National Highway Traffic Safety Administration (NHTSA) expanded the list of vehicles affected to include more than 50 models of BMW, Chrysler, Ford, GM, Honda, Mazda, Nissan, Mitsubishi, Subaru and Toyota. The agency issued an advisory

urging drivers "to act immediately" to get their cars fixed.

Sens. Richard Blumenthal, D-Conn., and Edward Markey, D-Mass., in letters to the NHTSA and the Department of Transportation, criticized the NHTSA's response and insisted the recalls, limited to vehicles in hot, humid climates such as Florida, Texas and Puerto Rico, should be expanded nationwide. NHTSA deputy administrator David Friedman has said the problem appears to be related to "high humidity and temperatures."

Takata was "committed to the highest standards of safety for our customers" and has "been consistently cooperating with NHTSA," chief executive officer Shigehisa Takada said on June 20. It's unclear how many lawsuits have been filed over injuries or deaths. One case, filed on Oct. 22 against Takada and Nissan's U.S. headquarters, seeks \$2 million for a Puerto Rican woman who claims to have suffered hearing loss. A Florida woman sued Takata and Honda's U.S. subsidiary on Oct. 23 over injuries caused by shrapnel that pierced the air bag of her 2001 Civic on July 7.

The first two class actions were filed on Oct. 27 by Dallas-based Baron & Budd, New York's Labaton Sucharow and Podhurst Orseck of Miami. One complaint, in the Southern District of Florida, names Takata, Bayerische Motoren Werke A.G. (BMW), Ford Motor Co., Honda and Toyota on behalf of consumers in six states and Puerto Rico.

"That complaint is largely addressing the Southern states and those with high humidity," said Roland Tellis of Baron & Budd's Los Angeles office.

The other case names Takata, BMW, Honda, Nissan Motor Co. Ltd. and Toyota, and was filed on behalf of a nationwide class in the Central District of California, where Honda's U.S. subsidiary is headquartered, he said.

A Honda representative did not return a call for comment. Representatives of BMW of North America LLC, Toyota and Ford declined to comment. Nissan North America Inc. spokesman Steve Yaeger wrote in an email: "Our primary focus right now is getting our customers with vehicles affected by the Takata recall to bring their vehicles into a dealership for remedy as soon as possible."

These suits focus primarily on the equipment manufacturer, said Carl

Tobias, a professor at the University of Richmond School of Law. "I don't think, from what we know about Takata, that GM or Toyota or anybody else ordered certain specifications that led these air bags to be more dangerous than they should be," he said.

But at least one carmaker, Honda, could have played a larger role. All three class actions allege Takata knew of the defect as early as 2001. But they also say Honda has known about the problems for years, citing a 2004 Alabama accident.

Regulators learned of the defect in 2008, according to the complaints, when Honda recalled 4,000 Accords and Civics. The next year, following two more accidents, Honda expanded its recall to about 400,000 cars.

Two more accidents occurred this year, both involving Hondas, the complaints say. One was first investigated as a homicide after the driver was found dead with apparent stab wounds. The class actions seek economic damages.

"If Takata and vehicle manufacturers aren't able to timely address this problem, consumers will have to do it themselves, park their vehicles, rent cars and pay for it themselves," Tellis said.