

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

December 2, 2014

To: Subcommittee on Commerce, Manufacturing, and Trade Democratic Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Hearing on “Takata Airbag Ruptures and Recalls”

On Wednesday, December 3, 2014, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing, and Trade will hold a hearing titled “Takata Airbag Ruptures and Recalls.” This is the second high-profile auto safety defect addressed by the Committee this year. The Oversight and Investigations Subcommittee held hearings on April 1, 2014, and on June 18, 2014, on GM’s failure to recall vehicles with deadly ignition switch defects.¹

I. BACKGROUND

Takata Corporation is one of the world’s largest suppliers of airbag components for automobiles, with its equipment installed in tens of millions of vehicles in recent years.² Between 2008 and 2014, Takata identified two distinct manufacturing problems in airbag inflator modules, resulting in nationwide recalls of 10.5 million vehicles from six vehicle manufacturers.³ In June 2014, the National Highway Traffic Safety Administration (NHTSA)

¹ Subcommittee on Oversight and Investigations, *Hearing on The GM Ignition Switch Recall: Why Did It Take So Long?*, 113th Cong. (Apr. 1, 2014); Subcommittee on Oversight and Investigations, *The GM Ignition Switch Recall: Investigation Update*, 113th Cong. (June 18, 2014).

² *Airbag Crisis Seen Spurring Shift from Japan’s Takata*, Bloomberg (Oct. 23, 2014) (online at www.bloomberg.com/news/2014-10-23/air-bag-crisis-seen-spurring-shift-from-japan-s-takata.html).

³ *Timeline: Takata Air Bag Recalls*, Reuters (Nov. 20, 2014) (online at www.reuters.com/article/2014/11/25/autos-takata-idUSL3N0T36K620141125); *The Long*

requested that Takata and car manufacturers that use certain Takata airbags conduct a regional recall of airbags for testing.⁴ These regional recalls involve 7.8 million vehicles from 10 vehicle manufacturers.⁵ The defects in both the earlier national and the recent regional recalls involve inflator modules in the airbags that inflate with too much force, causing the devices to rupture and spray metal fragments at drivers or passengers when the airbags are deployed.

A. National Recalls from 2008 to 2013

The national recalls affected both driver and passenger airbags installed in vehicles produced by six auto manufacturers. Takata traced the airbag failures to two manufacturing issues at two plants that lasted from April 2000 to October 2002.⁶ At Takata's Moses Lake plant in Washington State, the company identified problems with the quality control process between April 13, 2000, and September 11, 2002. At Takata's Monclova, Mexico plant, the company identified storage issues that allowed moisture to enter the inflator propellant wafers between October 4, 2001, and October 31, 2002.

In November 2008, Honda initiated the first recall related to ruptures in Takata airbag inflators. It recalled nearly 4,000 vehicles, stating "Metal fragments could pass through the airbag cushion material possibly causing injury to vehicle occupants."⁷ At the time, the root cause of the ruptures was unknown. Between 2008 and 2013, Honda continued to expand the population of recalled vehicles as it gained more information about the defect, and Takata learned of the manufacturing problems at its two plants.⁸

History Behind Takata's Massive Airbag Recalls, AutoBlog (June 27, 2014) (online at www.autoblog.com/2014/06/27/takata-airbag-recall-history-feature/).

⁴ *Timeline: Takata Air Bag Recalls*, Reuters (Nov. 20, 2014) (online at www.reuters.com/article/2014/11/25/autos-takata-idUSL3N0T36K620141125); National Highway Traffic Safety Administration, *Consumer Advisory: Vehicle Owners with Defective Airbags Urged to Take Immediate Action* (Oct. 22, 2014) (online at www.nhtsa.gov/About+NHTSA/Press+Releases/Vehicle-owners-with-defective-airbags-urged-to-take-immediate-action).

⁵ National Highway Traffic Safety Administration, *Consumer Advisory: Vehicle Owners with Defective Airbags Urged to Take Immediate Action* (Oct. 22, 2014) (online at www.nhtsa.gov/About+NHTSA/Press+Releases/Vehicle-owners-with-defective-airbags-urged-to-take-immediate-action).

⁶ Letter from Kazuo Higuchi, Senior Vice President, TK Holdings, Inc., to Nancy Lewis, Associate Administrator of Enforcement, National Highway Traffic Safety Administration (Apr. 11, 2013).

⁷ Letter from William R. Willen, Managing Counsel, Product Regulatory Office, American Honda Motor Company, to Daniel C. Smith, Associate Administrator for Enforcement, National Highway Traffic Safety Administration (Nov. 11, 2008).

⁸ Letter from Kazuo Higuchi, Senior Vice President, TK Holdings, Inc., to Nancy Lewis, Associate Administrator of Enforcement, National Highway Traffic Safety Administration (Apr. 11, 2013).

On April 11, 2013, Takata issued a defect information report regarding the two manufacturing problems. The report listed six manufacturers, who conducted recalls: Honda, Toyota, Nissan, Mazda, BMW, and GM.⁹

B. Regional Recalls and Safety Campaigns in 2014

In June 2014, the National Highway Traffic Safety Administration (NHTSA) began investigating a new series of problems with Takata airbags. This investigation remains open as NHTSA, Takata, and the affected auto manufacturers work to discover a root cause of the airbag inflator ruptures.¹⁰

NHTSA launched its investigation of more than a million vehicles on June 11, 2014, following reports of at least six Takata airbag inflator ruptures resulting in serious injury or death.¹¹ The investigation focused on vehicles in high humidity regions and initially included airbags supplied to five auto manufacturers (Chrysler, Honda, Mazda, Nissan, and Toyota).¹² NHTSA and Takata are working with each of the manufacturers to conduct initial “safety improvement campaigns” and regional recalls to understand why airbag inflators are rupturing and sending shrapnel into the vehicles.¹³ Takata is supplying auto manufacturers with new parts to replace potentially suspect inflators in the high humidity regions and is removing inflators and testing them.¹⁴

As of November 18, 2014, the investigation expanded to include ten automakers: BMW, Chrysler, Ford, General Motors, Honda, Mazda, Mitsubishi, Nissan, Subaru, and Toyota.¹⁵ There is variation among the responses by auto manufacturers to Takata and NHTSA’s actions. For example, Honda has chosen to expand its recall region to include California and all states along the Gulf Coast, in contrast to the nine other manufacturers’ actions limited to Florida,

⁹ *Id.*; *Timeline: Takata Air Bag Recalls*, Reuters (Nov. 20, 2014) (online at www.reuters.com/article/2014/11/25/autos-takata-idUSL3N0T36K620141125).

¹⁰ National Highway Traffic Safety Administration, *NHTSA Statement on Takata Air Bag Inflators* (online at www.safercar.gov/Vehicle+Owners/NHTSA-statement-on-takata-air-bags) (accessed Nov. 23, 2014).

¹¹ National Highway Traffic Safety Administration, *ODI Resume Investigation: PE 14-016* (June 11, 2014).

¹² *Id.*

¹³ National Highway Traffic Safety Administration, *Consumer Advisory: Vehicle Owners with Defective Airbags Urged to Take Immediate Action* (Oct. 22, 2014).

¹⁴ Letter from Mike Rains, Government Affairs Specialist, TK Holdings, Inc., to Frank Borris, Director, Office of Defects Investigation, National Highway Traffic Safety Administration (June 11, 2014).

¹⁵ National Highway Traffic Safety Administration, *USDOT Calls for National Recall of Defective Takata Driver Side Air Bags* (Nov. 18, 2014).

Hawaii, Puerto Rico, and the U.S. Virgin Islands.¹⁶ Toyota has advised against passengers using front seats until the airbags are fixed, even offering to disable passenger airbags as a precaution.¹⁷

II. QUESTIONS ABOUT WHEN TAKATA AND AUTO MANUFACTURERS BECAME AWARE OF AIRBAG PROBLEMS

Press reports have raised several questions about whether Takata and auto manufacturers were aware of airbag problems before they reported problems to NHTSA. The *New York Times* reported that Honda and Takata became aware of airbag problems as early as 2004, when an airbag ruptured in a Honda Accord and injured the car's driver.¹⁸ Three additional airbag ruptures were reported to Honda in 2007, and each time the company reached a confidential settlement with the driver.¹⁹

But according to the *Times*:

The danger of exploding air bags was not disclosed for years after the first reported incident in 2004, despite red flags — including three additional ruptures reported to Honda in 2007

In each of the incidents, Honda settled confidential financial claims with people injured by the air bags, but the automaker did not issue a safety recall until late 2008

The delays by both Honda and Takata in alerting the public about the defect — and later in Takata's acknowledging it extended beyond a small group of Honda vehicles — meant other automakers like BMW, Toyota and Nissan were not aware of possible defects in their own vehicles for years, putting off their recalls. ...

Honda reported its death and injury tallies to regulators only in a confidential submission in December 2011, when it issued its fifth recall for the rupture defect, according to the National Highway Traffic Safety Administration.²⁰

¹⁶ *Honda Will Replace Air Bags Nationwide If Drivers Ask*, Detroit News (Nov. 17, 2014) (online at www.detroitnews.com/story/business/autos/foreign/2014/11/17/honda-replace-air-bags-nationwide-customers-complain/19196339/).

¹⁷ *Toyota Warns Against Using Front Seats Amid Air-Bag Probe*, Bloomberg (Oct. 21, 2014) (online at www.bloomberg.com/news/2014-10-20/toyota-says-keep-front-seat-open-as-air-bag-probe-deepens.html).

¹⁸ *Air Bag Flaw, Long Known to Honda and Takata, Led to Recalls*, New York Times (Sept. 11, 2014) (online at www.nytimes.com/2014/09/12/business/air-bag-flaw-long-known-led-to-recalls.html?_r=0).

¹⁹ *Id.*

²⁰ *Id.*

Other reports indicate that Takata conducted secret tests of airbag inflators in 2004 following a rupture in a 2002 Honda Accord, and that – despite identifying problems – Takata employees were ordered to destroy the test results.²¹ Takata responded that the 2004 tests were evaluating a separate airbag tearing issue and that the company did not learn of the rupture in the 2002 Accord until 2005.²²

In addition, on November 24, 2014, Honda released the results of an independent audit of its required reporting to NHTSA’s Early Warning Reporting (EWR) database,²³ which identified significant underreporting by the company.²⁴ The audit found that from July 1, 2003, through June 30, 2014, Honda failed to report to NHTSA a total of 1,729 written claims or notices concerning injuries or deaths.²⁵ According to Honda, the underreporting is attributable to data entry and coding errors and an overly narrow interpretation of what constituted “written notice” under the TREAD Act. Eight of the 1,729 unreported claims involved Takata airbag ruptures, including one fatality and seven injury claims.²⁶

III. NHTSA’S RECENT ACTIONS

²¹ *Takata Saw and Hid Risk in Airbags in 2004, Former Workers Say*, New York Times (Nov. 6, 2014) (online at www.nytimes.com/2014/11/07/business/airbag-maker-takata-is-said-to-have-conducted-secret-tests.html).

²² *Takata Offers Its Rebuttal to Report of Secret Airbag Tests*, New York Times (Nov. 12, 2014) (online at www.nytimes.com/2014/11/13/business/takata-offers-its-rebuttal-to-report-of-secret-airbag-tests.html).

²³ EWR reporting was mandated under the Transportation Recall Enhancement Accountability and Documentation (TREAD) Act of 2000. Information required to be provided to NHTSA under the TREAD Act includes production information; information on accidents involving death or injury; aggregate data on warranty claims, consumer complaints, and property damage claims; field reports by company technicians; green tire identifiers; and the vehicle identification number (VIN) for vehicles involved in a fatal or injurious crash. 49 U.S.C. §§ 30101-30170.

²⁴ *Honda Admits Reporting Errors*, Detroit News (Nov. 24, 2014) (online at www.detroitnews.com/story/business/autos/foreign/2014/11/24/honda-admits-nhtsa-reporting-errors/70055414/).

²⁵ Honda North America, *Fact Sheet: Honda’s Early Warning Report Audit & NHTSA Special Order* (Nov. 24, 2014) (online at hondanews.com/releases/fact-sheet-honda-s-early-warning-report-audit-nhtsa-special-order?page=1).

²⁶ *Honda Underreported Deaths, Injuries to Feds*, USA Today (Nov. 25, 2014) (online at [ww.usatoday.com/story/money/cars/2014/11/24/honda-nhtsa-reporting-ewrs/70051658/](http://www.usatoday.com/story/money/cars/2014/11/24/honda-nhtsa-reporting-ewrs/70051658/)).

NHTSA issued a Special Order to Takata “as part of NHTSA’s ongoing oversight of these [airbag] recalls and its investigation into this defect” on October 30, 2014.²⁷ The Special Order contained 36 specific document and information requests, including requests for documents related to communications to customers about ruptured airbags, documents related to the manufacturing of the airbags and a list of every death or injury lawsuit or claim alleging a defective Takata inflator. Takata’s response to this Special Order was due December 1, 2014.

NHTSA issued a related Special Order to Honda addressing the same concerns on November 5, 2014, which contained 38 specific requests for documents and information pertaining to Takata airbag ruptures.²⁸ The Special Order requested documents showing all communications Honda had with Takata regarding airbag inflators and recalls of cars equipped with faulty inflators as well as all internal Honda communications about the recalls. Honda’s response is due to NHTSA by December 15, 2014.

NHTSA expanded these general and special orders again on November 18, issuing a General Order to ten vehicle manufacturers and Takata, and a Second Special Order to Takata, regarding the defective airbag inflators. The General Order required each of the ten manufacturers and Takata to file reports detailing all completed, ongoing, or planned testing of Takata airbag inflators outside of the high absolute humidity region and requested all documents concerning such testing.²⁹ The Special Order contained 18 detailed requests about the manufacturing process and chemical formulation of propellants used in Takata inflators.³⁰ Responses to these orders are due December 5, 2014.

On November 18, 2014, NHTSA announced that the Agency was calling for a national recall of vehicles’ driver’s side frontal airbags made by Takata.³¹ The expansion of the recall was prompted by an August 2014 crash that led to an airbag rupture in a 2007 Ford Mustang in

²⁷ Special Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Oct. 30, 2014).

²⁸ Special Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Jay Joseph, Assistant Vice President, Product Regulatory Office, American Honda Motor Co., Inc. (Nov. 5, 2014).

²⁹ General Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Kazuo Higuchi, Senior Vice President, TK Holdings Inc., *et al.* (Nov. 18, 2014).

³⁰ Second Special Order In re: PE14-016 Air Bag Inflator Rupture from O. Kevin Vincent, Chief Counsel, National Highway Traffic Safety Administration directed to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Nov. 18, 2014).

³¹ National Highway Traffic Safety Administration, *USDOT Calls for National Recall of Defective Takata Driver Side Air Bags* (Nov. 18, 2014). While the regional recalls and regional safety campaigns of 2014 for Takata have been for both driver’s side and passenger side airbags, NHTSA’s recent request for a national recall is, thus far, limited to driver’s side airbags.

North Carolina, outside of the previous regional recall area.³² The recall expansion will likely affect Ford, Honda, Chrysler, Mazda, and BMW vehicles. However, neither NHTSA nor the affected manufacturers have released information on the specific vehicle makes and models being recalled.³³ Takata did not agree to conduct this recall.³⁴

Eight days later, on November 26, 2014, in a Recall Request Letter, NHTSA demanded that Takata recall all affected driver's side airbags and issue a Part 573 Safety Recall Report, writing: "[T]he Agency has tentatively concluded that a defect related to motor vehicle safety exists on a national basis in the subject driver's side air bag inflators."³⁵

Takata has not yet responded to this request. As described in its letter to Takata, if Takata does not comply with NHTSA's demand, NHTSA may make an Initial Decision that a safety defect exists and publish a notice of its decision in the Federal Register.³⁶ An initial decision will be followed by a public meeting, during which Takata and interested members of the public can present information and arguments on the issue.³⁷ NHTSA also may begin proceedings to seek penalties, subjecting Takata to civil penalties of up to \$7,000 per vehicle not recalled.³⁸

IV. LEGISLATIVE PROPOSALS

A. H.R. 4364, the Motor Vehicle Safety Act of 2014

On April 1, 2014, Full Committee Ranking Member Henry A. Waxman, Commerce, Manufacturing, and Trade Subcommittee Ranking Member Jan Schakowsky, and other Committee Democrats introduced H.R. 4364, the Motor Vehicle Safety Act of 2014. Under H.R. 4364, manufacturers would be required to report additional information on fatal incidents, and

³² *U.S. Regulators Call for Takata Airbag Recall to Be Extended Nationwide*, New York Times (Nov. 28, 2014) (online at www.nytimes.com/2014/11/19/business/regulators-call-for-takata-airbag-recall-to-be-extended-nationwide.html).

³³ National Highway Traffic Safety Administration, *USDOT Calls for National Recall of Defective Takata Driver Side Air Bags* (Nov. 18, 2014).

³⁴ Letter from Frank Borris, Director, Office of Defects Investigation, National Highway Traffic Safety Administration, to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Nov. 26, 2014) (Preliminary Evaluation No. PE14-016).

³⁵ *Id.*

³⁶ *Id.*

³⁷ National Highway Traffic Safety Administration, *Motor Vehicle Safety Defects and Recalls Campaigns* (online at www.nhtsa.gov/Vehicle+Safety/Recalls+&+Defects/Motor+Vehicle+Safety+Defects+and+Recalls+Campaigns?renderPage=3) (accessed Nov. 30, 2014).

³⁸ Letter from Frank Borris, Director, Office of Defects Investigation, National Highway Traffic Safety Administration, to Kazuo Higuchi, Senior Vice President, TK Holdings Inc. (Nov. 26, 2014) (Preliminary Evaluation No. PE14-016).

NHTSA would be required to improve the availability and accessibility of vehicle safety information online, including Early Warning data.

H.R. 4364 also would ensure corporate responsibility for reported safety information, allow individuals to appeal the denial of a defect investigation petition, and restrict NHTSA employees responsible for vehicle safety from certain post-employment activities.

In addition, H.R. 4364 would provide the agency with additional funding, increase civil penalties for violations of federal safety standards, and give NHTSA the authority to expedite a recall in the case of a defect that presents an imminent hazard to the public.

B. H.R. 5654, the Vehicle Safety Improvement Act of 2014

Subcommittee Ranking Member Jan Schakowsky, Full Committee Ranking Member Henry A. Waxman, and other Committee Democrats introduced H.R. 5654, the Vehicle Safety Improvement Act of 2014, on September 18, 2014. Among its provisions, this bill requires that manufacturers' safety-related communications regarding defective parts be made public on NHTSA's website; improves the Early Warning Reporting system, including by requiring the manufacturer's assessment of why a fatal incident may have occurred; and requires that all recalls occur on a national basis.

In addition, it requires the establishment of standards for motor vehicles to reduce the number of injuries and death of pedestrians struck by vehicles; requires auto dealers to notify buyers or lessees of any safety-related defect that has not been remedied, and buyers or lessees to acknowledge in writing that the dealer informed them of the defect; and increases the penalties that could be assessed, and in most cases uncaps the statutory maximum penalty, for violations of federal motor vehicle safety laws, like the failure to disclose relevant information to regulators in a timely manner.

V. WITNESSES

The following witnesses have been invited to testify:

Panel I

Hiroshi Shimizu

Senior Vice President for Global Quality Assurance
Takata Corporation

Abbas Saadat

Regional Product Safety Executive, Vice President of Vehicle Safety and Compliance
Liaison Office
Toyota North America

Rick Schostek

Executive Vice President

Honda North America

Craig Westbrook
Vice President, Aftersales
BMW of North America

Panel II

David J. Friedman
Deputy Administrator
National Highway Traffic Safety Administration