

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N**

**RICK A. DES-ROSIERS and STEPHEN KOMINAR**

**Plaintiffs**

**and**

**TAKATA CORPORATION, TK HOLDINGS INC., HONDA MOTOR CO., LTD.,  
HONDA OF AMERICA MANUFACTURING, INC.,  
and HONDA CANADA INC.**

**Defendants**

*Proceeding under the Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

Notice of Action issued on November 7, 2014

**DEFINED TERMS**

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein:

- (a) **“Airbag Inflator”** means a chamber that generates gas to inflate and deploy an airbag in order to protect a vehicle occupant;
- (b) **“Body Control Module”** means an electronic control unit responsible for monitoring and controlling various electronic accessories in the vehicle’s body, and which communicates with other onboard computers;
- (c) **“CJA”** means the Ontario *Courts of Justice Act*, R.S.O. 1990, c.C-43, as amended;

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RK

- (d) “**Class**” or “**Class Members**” means all persons in Canada who on April 10, 2013 owned one of the **Vehicles** subject to Transport Canada Recall #2013111, and all persons in Canada who on June 20, 2014 owned one of the **Vehicles** subject to Transport Canada Recall #2014242;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended;
- (f) “**Defendants**” means the **Takata, TK, Honda Japan, Honda America and Honda Canada**;
- (g) “**Des-Rosiers**” means Rick A. Des-Rosiers;
- (h) “**Excluded Persons**” means the defendants and their officers, directors and their respective heirs, successors and assigns;
- (i) “**Honda America**” means Honda of America Manufacturing, Inc.;
- (j) “**Honda Canada**” means Honda Canada Inc.;
- (k) “**Honda Defendants**” means **Honda America, Honda Canada and Honda Japan**;
- (l) “**Honda Japan**” means Honda Motor Co., Ltd.;
- (m) “**Kominar**” means Stephen Kominar;
- (n) “**Motor Vehicle Safety Act**” means the *Motor Vehicle Safety*, S.C. 1993, c. 16, as amended;
- (o) “**NHTSA**” means the U.S. National Highway Traffic Safety Administration;
- (p) “**Plaintiffs**” means **Des-Rosiers and Kominar**;
- (q) “**Takata**” means Takata Corporation;
- (r) “**Takata Defendants**” means **Takata and TK**;
- (s) “**TK**” means TK Holdings Inc.; and
- (t) “**Vehicles**” means those vehicles subject to Transport Canada Recall #2013111 issued on April 10, 2013 and Transport Canada Recall #2014242 issued on June 20, 2014 as described in paragraph 3.

2. The Plaintiffs, on their own behalf and on behalf of all Class Members, seek:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs;
- (b) general damages and special damages assessed individually or in the aggregate in the amount of \$500,000,000;
- (c) punitive damages and/or exemplary damages in the amount of \$150,000,000;
- (d) a reference to decide any issues not decided at the trial of the common issues;
- (e) prejudgment interest compounded and postjudgment interest pursuant to the *CJA*;
- (f) costs of this action pursuant to the *CPA*, alternatively, on a full or substantial indemnity basis plus the cost of administration and notice pursuant to s. 26(9) of the *CPA* plus applicable taxes; and
- (g) such further and other relief as to this Honourable Court seems just.

### THE NATURE OF THIS ACTION

3. This class action concerns the life-threatening and dangerous Airbag Inflator that was negligently designed, manufactured and installed by the Defendants into the Vehicles subject to Transport Canada Recall #2013111 and Transport Canada Recall #2014242 and named in the following chart:

MAKE	MODEL	MODEL YEARS: INCLUSIVE
ACURA	EL	2001-2003
	MDX	2003
HONDA	ACCORD	2003
	CIVIC	2001-2003

MAKE	MODEL	MODEL YEARS: INCLUSIVE
	CR-V	2002-2003
	ELEMENT	2003
	ODYSSEY	2002-2003
	PILOT	2003

4. The Defendants have identified at least 2,873 frontal Airbag Inflator ruptures involving injury as a result of metal fragments being propelled into the Vehicles and Vehicles' occupants.

5. The Defendants have identified at least six frontal Airbag Inflator ruptures causing death as a result of metal fragments being propelled into the Vehicles' occupants.

6. Takata's CEO said: "[T]he moisture absorption control of the gas generating agent in some driver seat airbags had not been correctly implemented at the time of manufacture, as a result of which an inflator canister may rupture when the airbag deploys.... We deeply regret that the problem in our airbags have caused problems."

#### **THE PLAINTIFFS**

7. Des-Rosiers is a 55 year-old Canadian federal government employee residing in the City of Windsor, in the Province of Ontario. On August 18, 2005 he purchased a 2003 Honda Pilot. He currently owns this Vehicle.

8. Kominar is a 77 year-old retiree residing in the City of Windsor, in the Province of Ontario. On November 23, 2002, he purchased a 2002 Honda CR-V. He currently owns this Vehicle.

#### **PARTICULARS OF THE CLASS**

9. The Class is comprised of all persons in Canada who on April 10, 2013 owned one of the approximately 107,786 Vehicles subject to Transport Canada Recall #2013111, and of all persons in Canada who on June 20, 2014 owned one of the approximately 168,968 Vehicles subject to Transport Canada Recall #2014242. The members of the Class are known to Honda Canada.

#### **THE DEFENDANTS AND THEIR RELATIONSHIP**

10. Takata is a corporation organized and existing under the laws of Japan. Takata describes itself as a vertically-integrated company involved in automotive safety systems. Takata was responsible for the engineering, design, development, research and manufacture of the Airbag Inflators.

11. TK is a corporation organized and existing under the laws of the State of Delaware. It was also responsible for the engineering, design, development, research and manufacture of the Airbag Inflator. TK is and was at all material times a wholly-owned subsidiary of Takata.

12. Honda Japan is a corporation organized and existing under the laws of Japan. Honda Japan describes itself as a company that develops, produces, and manufactures a variety of motor products, ranging from small general-purpose engines and scooters to specialty sports cars. Honda Japan was responsible for the engineering design, development, research and manufacture of the Vehicles.

13. Honda America is a corporation organized and existing under the laws of the State of Delaware. It was also responsible for the engineering design, development, research and manufacture of the Vehicles. Honda America is and was at all material times a wholly-owned subsidiary of Honda Japan.

14. Honda Canada is a federally incorporated Canadian company with its head office in Markham, Ontario. It was also involved in the engineering, design, development, research and manufacture of the Vehicles. Honda Canada is and was at all material times a wholly-owned subsidiary of Honda Japan.

#### **THE DANGEROUS DEFECT IN THE AIRBAG INFLATOR**

15. Airbags consist of three main component parts: (i) the Airbag Inflator, (ii) the airbag cushion material, and (iii) the airbag module that holds both the Airbag Inflator and cushion material in the steering wheel, dashboard or elsewhere in the vehicle.

16. When the airbag is triggered to deploy, a chemical propellant housed within the metal Airbag Inflator in the form of a stack of solid propellant wafers is ignited. The heat from the ignition causes the propellant wafers to undergo a chemical reaction which produces a gas. The Airbag Inflator has a number of holes that allows the gas to exit and fill the Airbag. The holes initially are sealed, often with a thin layer of aluminum, and the force of the gas breaks the seal after the propellant is ignited, allowing for a properly timed inflation of the Airbag. Upon inflation, the Airbag is drawn out of the steering wheel or dashboard. When the vehicle occupant makes contact with the Airbag, the gas is dispersed through vents located along the sides and back of the bag causing it to deflate. This whole process happens within milliseconds of a crash.

17. The filled airbag's purpose is to cushion the vehicle's occupants during a crash and provide protection to their bodies when they strike interior vehicle components such as the steering wheel or a window.

18. An Airbag Inflator rupture occurs when there is too much pressure from the gas within the Airbag Inflator. This happens when the propellant density is too low, which causes it to burn faster and produce gas too quickly after it is ignited, or when the propellant wafers crumble or break. Instead of only exiting through the Airbag Inflator's designed holes, the excessive pressure of the gas ruptures the Airbag Inflator's metal housing. This metal can then puncture the airbag cushion, can break into fragments, and can come into contact with vehicle occupants.

19. In or about 1999, TK researchers in Michigan were pressured by Takata executives to develop a more cost-effective propellant for use in its Airbag Inflators. The TK researchers proposed a propellant based on ammonium nitrate.

20. But the Takata engineering team in the Moses Lake, Washington factory responsible for assembling the propellant wafers into the Airbag Inflators raised objections to using a propellant based on ammonium nitrate because they understood it to be a “risky compound”.

21. The senior engineer at the Moses Lake, Washington factory, Mr. Mark Lillie, advised Takata executives that explosives manuals warned that the compound “tended to disintegrate on storage under widely varying temperature conditions” with “irregular ballistic” consequences.

22. In or about 2000, Takata adopted ammonium nitrate as its propellant base due to, among other things, its low cost so as to remain competitive in the Airbag Inflator market.

23. Since 2000, other Airbag Inflator manufacturers in North America have refused to adopt ammonium nitrate based propellants due to safety concerns.

24. In an interview on November 19, 2014 with the New York Times, Mr. Lillie described Takata’s adoption of the ammonium nitrate based propellant in its



Airbag Inflators: “It’s a basic design flaw that predisposes this propellant to break apart, and therefore risk catastrophic failure in an inflator [sic].”

25. The Takata Defendants provided the Airbag Inflators used in the assembly of all of the recalled Vehicles as further described below.

26. In or about 2000, the Takata Defendants developed internal guidelines and specifications for the manufacturing of the new Airbag Inflators with ammonium nitrate propellant. Specifically, the ammonium nitrate propellant was to be stored in sealed containers to protect it from humidity prior to being pressed into propellant wafers. Each individual propellant wafer and propellant wafer stack was to be pressed at a specific force to ensure combustion within the Airbag Inflator was controlled. Each Airbag Inflator was to contain a stack of seven propellant wafers.

27. Between 2000 and 2002, when the Takata Defendants manufactured the Airbag Inflators at their factories in Moses Lake, Washington and in Monclova, Mexico, they did not manufacture or handle the ammonium nitrate propellant and wafers in accordance with their own internal guidelines and specifications.

28. Production of the Airbag Inflators at the Moses Lake, Washington factory commenced on April 13, 2000. Between April 13, 2000 and September 11, 2002, this factory produced propellant wafers with an inadequate compaction force. Although the Moses Lake factory had an “auto-reject” function that could detect and reject propellant wafers with inadequate compression by monitoring the compression load that had been

applied, this function was turned off manually by the machine operator in this factory. Defective Airbag Inflators were thus shipped to the Honda Defendants from the Moses Lake, Washington factory for assembly into the Vehicles.

29. Production of the Airbag Inflators at the Monclova, Mexico factory commenced on October 4, 2001. Between October 4, 2001 and October 31, 2002, this factory produced propellant wafers that were exposed to dangerous levels of humidity. Although the Takata Defendants had internal specifications on the handling of the ammonium nitrate containers, the ammonium nitrate was left sitting in unsealed containers and exposed to moisture from the factory floor contrary to these specifications. These propellant wafers absorbed moisture beyond the allowable limits.

30. At that time, the Takata Defendants knew that the Monclova, Mexico factory was manufacturing Airbag Inflators with a defect rate that was “six to eight times above acceptable limits, or roughly 60 to 80 defective parts for every one million Airbag Inflators shipped.” Defective Airbag Inflators were thus shipped to the Honda Defendants from the Monclova, Mexico factory for assembly into the Vehicles.

31. The Takata Defendants’ propellant wafer lot production history records and the Airbag Inflator production records do not permit the identification of whether all or some or which of the Airbag Inflators were manufactured with the previously described defects. Throughout this statement of claim, these Airbag Inflators are referred to as “defective Airbag Inflators.”

32. The Defendants thus do not know which of the Vehicles assembled with Airbag Inflators manufactured at these factories during the time periods previously described are defective, and which are not defective.

33. The only way to ensure a Vehicle does not contain a defective Airbag Inflator is to recall the Vehicle and service it with an Airbag Inflator that is not defective.

34. In 2004, a Vehicle was involved in an otherwise non-catastrophic collision that caused the Airbag Inflator to deploy. It deployed abnormally and ruptured and killed the Vehicle's driver. Because of the nature of the "stab-like" lacerations to the driver's face, the responding police initially treated the case as a homicide. But the Los Angeles County Coroner's report concluded that the deceased driver's lacerations came from "a metallic portion" of the defective Airbag Inflator that "hit the deceased on the face as it deployed". This incident is referred to as the 2004 Los Angeles Airbag Inflator rupture.

35. In or about 2004, TK was informed by Honda America of the 2004 Los Angeles Airbag Inflator rupture. A former TK lab employee described his review of this defective Airbag Inflator in 2004 saying that it "looked like it had exploded, and had a hole punched out of the side of the canister."

36. TK conducted a series of tests on 50 defective Airbag Inflators retrieved from inoperable Vehicles in junkyards to determine the cause of the 2004 Los Angeles

Airbag Inflator rupture. Each of these Vehicles had been assembled with defective Airbag Inflators manufactured at the Moses Lake, Washington or the Monclova, Mexico factories during the time periods described above.

37. The tests were conducted outside of normal business hours during evenings and weekends at a site with restricted access. The tests revealed that two of these defective Airbag Inflators showed cracks and the start of “rapid disassembly” during the tests. “Rapid disassembly” was TK’s preferred term for explosion. This is a very high failure rate in the Airbag Inflator manufacturing industry.

38. TK lab employees theorized that a problem with the welding of the Airbag Inflator’s canister, intended to hold the airbag’s explosives, made its structure vulnerable to splitting and rupturing. These employees were directed to design prototypes for possible fixes and a second canister to strengthen the unit was designed.

39. In or around 2004, TK shared the results of this testing of the 50 defective Airbag Inflators with the Honda Defendants. But the Honda Defendants did not advise the regulators or the Class Members of this dangerous defect with the Airbag Inflators or announce a recall of the Vehicles.

40. After the design of the replacement second canister, TK directed that further testing be stopped, and all lab employees involved with this testing of the Airbag Inflators were instructed to destroy all related data including video and computer

backups. The prototypes of the new non-defective Airbag Inflators were also ordered to be disassembled and disposed of in a scrap-metal dumpster.

41. From May to August of 2007, TK received three more accident reports from Honda America involving ruptured defective Airbag Inflators. In response, TK began collecting defective Airbag Inflators for inspection from the field, investigating the root cause of the defect.

42. By September 2008 the investigation undertaken by TK after August 2007 confirmed what TK already knew during 2000 - 2002: that a defect existed in the Airbag Inflators because of the inadequate manufacturing processes involving propellant wafers produced between 2000 and 2002 in its factories in Moses Lake, Washington and Monclova, Mexico. The results of this investigation were shared with the Honda Defendants.

43. As a result, between 2008 and 2011, Honda Canada and Honda America reported a series of safety recalls for vehicles equipped with defective driver Airbag Inflators produced between 2000 and 2002. This included approximately 1.1 million vehicles in Canada and the U.S. with model years ranging from 2001 to 2004. But Honda Canada and Honda America did not recall all vehicles manufactured with the defective Airbag Inflators at this time, leaving these dangerous Vehicles on the road until they were recalled in 2013 and 2014, as described below.

44. In 2011, Takata was notified of Airbag Inflator ruptures occurring in scrapyards in Japan by salvage operations conducting “end of life” recycling processes for expired vehicles. Takata launched an investigation and began testing defective Airbag Inflators taken from vehicles in the field.

45. By October 2012, the investigation undertaken by Takata in 2011 confirmed what it already knew in 2000 – 2002 and what TK already concluded from its investigation in September 2008: that inadequate compression of the propellant wafers and exposure to poor moisture conditions, in combination with aging of the propellant was causing the defective Airbag Inflators to rupture.

46. By April 2013, the Takata Defendants confirmed the existence of this Airbag Inflator defect in the vehicles not covered by the recalls that occurred between 2008 and 2011 to the NHTSA. This led to a second series of safety recalls for vehicles equipped with defective Airbag Inflators as further described below.

47. Honda America conducted its own investigation into the Airbag Inflators, independently from the Takata Defendants. On October 20, 2011, Honda America learned of the rupture of the Airbag Inflator in a vehicle driven in Puerto Rico causing the death of this vehicle’s occupants.

48. On February 3, 2012, the Puerto Rican vehicle was received by Honda America for analysis and its investigation confirmed that this Vehicle’s defective Airbag Inflator had ruptured.

49. Separately from the Takata Defendants' investigations into the Airbag Inflators, on March 14, 2012, Honda America informed the NHTSA that it would investigate and collect Airbag Inflators manufactured during the 2000 – 2002 time period at the Moses Lake, Washington and the Monclova, Mexico factories to determine why some Airbag Inflators were rupturing.

50. On November 21, 2012, Honda America's investigation of the Airbag Inflators indicated abnormal combustion of the Airbag Inflators was possible but Honda America advised the NHTSA that it could not determine its cause.

51. On March 6, 2013, Honda America recreated the Airbag Inflator's production using the same methods as were used during 2000 – 2002 production periods previously described.

52. Between March 6, 2013 and April 10, 2013, the investigation undertaken by Honda America confirmed what it already knew in 2004 after TK advised it of its tests on the 50 defective Airbag Inflators: that the propellant used in the manufacturing of the Airbag Inflators during 2000 – 2002 could have been manufactured out of specification.

53. On April 10, 2013, Honda America issued a Recall Notification regarding the defective Airbag Inflators to NHTSA. In this letter Honda America explained the reason for the recall of some of the Vehicles assembled with the defective Airbag Inflators:

**HONDA**  
American Honda Motor Co., Inc.  
1919 Torrance Boulevard  
Torrance, CA 90501-2746  
Phone (310) 783-2000

April 10, 2013

Ms. Nancy Lewis  
Associate Administrator for Enforcement  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
Attn: Re: Recall Management Division (NVS-215)  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**RE: Recall Notification**  
**Honda: 2001-2003 Civic, 2002-2003 CR-V and 2002 Odyssey**  
**Passenger Airbag Inflator**

Dear Ms. Lewis:

On April 4, 2013 Honda Motor Co., Ltd. (HMC) determined that a potential defect relating to motor vehicle safety exists in the passenger airbag inflator of certain 2001-2003 model year Honda Civic, 2002-2003 model year Honda CR-V, and 2002 model year Honda Odyssey automobiles, and is providing notification to the National Highway Traffic Safety Administration in accordance with 49 CFR Part 573 Defect and Noncompliance Reports.

573.6(c)(1)

**Name of manufacturer:** Honda Motor Co., Ltd. (HMC)  
Honda of America Mfg., Inc. (HAM)  
Honda of Canada Mfg. (HCM)  
Honda of the UK Mfg. Ltd (HUM)  
Honda Mfg. of Alabama, LLC (HMA)

**Manufacturer's agent:** Jay Joseph  
American Honda Motor Co., Inc. (AHM)  
1919 Torrance Blvd.  
Torrance, CA 90501-2746

573.6(c)(2)

**Identification of potentially affected vehicles:**  
See ATTACHMENT 1

**Description of the basis for the determination of the recall population:**

The recall population was determined based on manufacturing records. The VIN range reflects all possible vehicles that could potentially experience the problem.



573.6(c)(2)(iv)

**Identification of affected component:**

Component: Front Passenger Airbag Inflator  
 Country of Origin: U. S.A.  
 Manufacturer: T.K. Holdings, Inc.  
 Contact Name: Kazuo Higuchi  
 Address: 888 16<sup>th</sup> Street, NW, Suite 800  
 Washington, DC 20006  
 Telephone: (202) 729-6332

573.6(c)(3)

**Total number of potentially affected vehicles:**

561,422

573.6(c)(4)

**Percentage of affected vehicles that contain the defect:** Unknown

573.6(c)(5)

**Defect description:**

In certain vehicles, the passenger's (frontal) airbag inflator could produce excessive internal pressure. If an affected airbag deploys, the increased internal pressure may cause the inflator to rupture. In the event of an inflator rupture, metal fragments could be propelled upward toward the windshield, or downward toward the front passenger's foot well, potentially causing injury to a vehicle occupant.

54. Also on April 10, 2013, Honda Canada reported Road Safety Recall #2013111 to Transport Canada. A total of 107,786 of the Vehicles were recalled. This published Road Safety Recall reads as follows:

**Road Safety Recalls Database****Transport Canada Recall #2013111**

<b>Recall Date</b>	2013/04/10
<b>Notification Type</b>	Safety Mfr
<b>System</b>	Airbag
<b>Manufacturer Recall Number</b>	H-2-13
<b>Units affected</b>	107,786
<b>Category</b>	Car, Minivan
<b>Recall Details</b>	

On certain vehicles the passenger (frontal) airbag inflator could produce excessive internal pressure during airbag deployment. Increased pressure may cause the inflator to rupture, which could allow fragments to be propelled toward vehicle occupants, increasing the risk of injury. This could also damage the airbag module, which could prevent proper deployment. Failure of the passenger airbag to fully deploy during a crash (where deployment is warranted) could increase the risk of personal injury to the seat occupant. Correction: Dealers will inspect and, if necessary, replace the passenger airbag inflator.

<b>Make</b>	<b>Model</b>	<b>Model Year(s) Affected</b>	
ACURA	EL	2001 2002 2003	
HONDA	CIVIC	2001 2002 2003	
HONDA	CR-V	2002 2003	
HONDA	ODYSSEY	2002	
<b>Manufacturer Name</b>		<b>Toll Free Number</b>	<b>Web Site</b>
HONDA		1-888-946-6329	

55. On April 11, 2013, Kazuo Higuchi, Senior Vice President of Takata wrote to NHTSA regarding “a potential defect relating to motor vehicle safety in certain air bag [sic] inflators” arising from manufacturing errors at the Moses Lake, Washington and Monclova, Mexico factories. Mr. Higuchi wrote that the reason for this defect was that the Airbag Inflator “could potentially deteriorate over time due to environmental factors, which could lead to over-aggressive combustion in the event of an air bag deployment. This could create excessive internal pressure within the inflator, and the body of the inflator could rupture”.

56. In this letter, Mr. Higuchi also admitted that the Takata Defendants do not know how many of the Airbag Inflators are defective, and how many of the defective Airbag Inflators were installed into vehicles because they did not have those records:

**TAKATA**  
288 16<sup>th</sup> Street, NW, Suite 800  
Washington, DC 20006 USA  
TEL: 202-729-6332  
FAX: 202-349-4034

April 11, 2013

Ms. Nancy Lewis:

Associate Administrator of Enforcement  
National Highway Traffic Safety Administration  
Attn: Re: Recall Management Division (NVS-215)  
Room W48-302  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

**RE: Defect Information Report, Certain Air Bag Inflators Used as Original Equipment**

Dear Ms. Lewis:

TK Holdings Inc. ("Takata") is submitting this Defect Information Report ("DIR") pursuant to 49 CFR 573.3(f) and 573.6(c). This DIR contains information about a potential defect relating to motor vehicle safety in certain air bag inflators used as original equipment in vehicles produced by several vehicle manufacturers.

If you have any questions about this DIR, please contact the undersigned at (202) 729-6332 or at [kazuo.higuchi@takata.com](mailto:kazuo.higuchi@takata.com).

Sincerely,

Kazuo Higuchi  
Senior Vice President

Enclosure

## **DEFECT INFORMATION REPORT**

1. **Manufacturer's name:**

TK Holdings Inc.

2. **Items of Equipment Potentially Containing the Defect:**

Certain air bag inflators installed in frontal passenger-side air bag modules equipped with propellant wafers manufactured at Takata's Moses Lake, Washington plant during the period from April 13, 2000 (start of production)

through September 11, 2002 (an improved quality control process was confirmed to be in place no later than September 12, 2002), and certain air bag inflators manufactured at Takata's Monclova, Mexico plant during the period from October 4, 2001 (start of production) through October 31, 2002 (an improved quality control system for handling and storing of the propellant wafers was confirmed to be in place no later than November 1, 2002).

The inflators covered by this determination were installed as original equipment in vehicles manufactured by the following entities:

Toyota Motor Corporation  
Contact: Bob Waltz, Group VP  
Product Quality and Service Support  
Toyota Motor Sales, Inc.  
91001 South Western Ave.  
Torrance CA 90501  
(310) 468 9048

Honda Motor Co., Ltd.  
Contact: Jay Joseph  
American Honda Motor Co., Inc  
1919 Torrance Boulevard  
Torrance, CA 90501-2746  
(310) 783-2000

Nissan Motor Co., Ltd.  
Contact: Dale Weiss and James Hunter  
Nissan North America, Inc.  
610 Enon Spring Rd. E,  
Smyrna, TN 37167-4410  
(615) 223-3199

Mazda Motor Corporation  
Contact: Max Yamashita, Manager, Part Quality Assurance  
26900 Hall Road  
Woodhaven, MI 48183  
(734) 692-3681

BMW  
Contact: Robert Janssen  
Bayerische Motoren Werke AG  
Knorrstr. 147  
80788 Munchen Germany  
+49 89 382-45277

General Motors  
Contact: M. Carmen Benavides, Director Product  
Investigations and Safety Regulations  
30001 Van Dyke Rd.  
Warren Mi 48090-9020

**3. Total Number of Items of Equipment Potentially Involved:**

Although Takata knows the number of subject air bag inflators it supplied to each vehicle manufacturer, Takata does not know how many of the subject inflators were installed in vehicles sold in the United States. That information is available from the vehicle manufacturers.

4. **Approximate Percentage of Items of Equipment Estimated to Actually Contain the Defect:**

Unknown. However, based on the very small number of field incidents that have occurred, it is extremely low.

5. **Description of the defect:**

Some propellant wafers produced at Takata's plant in Moses Lake, Washington between April 13, 2000 and September 11, 2002 may have been produced with an inadequate compaction force. (Beginning in September 2001, Takata utilized an "auto-reject" ("AR") function that can detect and reject propellant wafers with inadequate compression by monitoring the compression load that had been applied. However, for the next year, that function could be turned on and off manually by the machine operator in the plant.

No later than September 12, 2002, the machine was modified by the addition of an interlock feature that precluded production of propellant wafers without the AR function in place.)

In addition, some propellant wafers used in inflators produced at Takata's plant in Monclova, Mexico between October 4, 2001 and October 31, 2002 may have been exposed to uncontrolled moisture conditions. Those wafers could have absorbed moisture beyond the allowable limits. (Production processes were revised no later than November 1, 2002 to assure proper handling and environmental protection of all in-process propellant.)

In both cases, the propellant could potentially deteriorate over time due to environmental factors, which could lead to over-aggressive combustion in the event of an air bag deployment. This could create excessive internal pressure within the inflator, and the body of the inflator could rupture.

6. **Chronological summary of events leading to this determination:**

October 2011 -Takata was first notified of an incident related to this issue, which involved the deployment of a passenger air bag in Japan. Takata promptly began an investigation, consisting of a fault tree analysis and an analysis of production records.

November 2011 -Takata was made aware of an incident in which an air bag inflator ruptured in a U.S vehicle (in Puerto Rico).

February -June 2012 -Takata conducted replication tests on inflators taken from vehicles in the field, but could not reproduce the problem.

September -November 2012 -Takata was informed of three additional incidents in the United States (two in Puerto Rico and one in Maryland (the Maryland vehicle had previously been operated in Florida for eight years)).

October 2012 -After considering a wide range of possible causes, Takata concluded that there was a possibility that the propellant in certain propellant wafers produced at the Moses Lake, Washington plant might not have been adequately compressed. Through replication tests, Takata confirmed that the combination of an inadequately compressed propellant wafer and exposure to certain environmental conditions for an extended period could create excessive internal pressure within the inflator during a deployment, and the body of the inflator could rupture. However, Takata also discovered at this time that, beginning in September 2001, the machine that molded the propellant into wafers was equipped with an "auto-reject" CHAR") function that would identify and reject wafers with inadequate compression.

February -March 2013 -Takata discovered that, for approximately one year, the AR function could be turned on and off manually by the machine operator in the plant. Takata subsequently confirmed that an interlock feature was added no later than September 12, 2002, which precluded production of wafers unless the AR function was in place.

Takata also discovered that some propellant wafers that were used in inflators produced at its plant in Monclova, Mexico between October 4, 2001 and October 31, 2002 may have been exposed to uncontrolled moisture conditions, and that those wafers could have absorbed moisture beyond the allowable limits. Takata confirmed that the combination of excess moisture in a propellant wafer and exposure to certain environmental conditions for an extended period also could lead to an inflator rupture due to excessive internal pressure.

Takata is aware of only six such incidents involving the subject inflators in vehicles in the field (four in the United States and two in Japan). (In addition, there were six incidents that occurred in salvage yards in Japan.) Moreover, Takata is not aware of any injuries associated with the improper deployment of any air bags containing the suspect inflators. However, in view of the possibility that such a deployment could lead to an injury, on April 5, 2013, Takata decided that a defect related to motor vehicle safety exists.

**7. Description of the Remedy Program:**

Takata will work with the manufacturers of the vehicles in which the covered air bag inflators were installed to implement an appropriate field action.

57. On June 19, 2014, Honda America reported a recall to the NHTSA regarding defective Airbag Inflators. In this letter Honda America explained the reason for the recall of the Vehicles assembled with the defective Airbag Inflators:

**HONDA**  
 American Honda Motor Co., Inc.  
 1919 Torrance Boulevard  
 Torrance, CA 90501-2746  
 Phone (310) 783-2000  
 14V-353

June 19, 2014

Ms. Nancy Lewis  
 Associate Administrator for Enforcement  
 NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
 Attn: Re: Recall Management Division (NVS-215)  
 1200 New Jersey Avenue, SE  
 Washington, DC 20590

**RE: Honda and Acura Passenger Airbag Inflator Safety Improvement Campaign**

**Honda Vehicles**  
**2003-2005 Model Year Accord, Civic, CR-V, Element, Pilot**  
**2003-2004 Model Year Odyssey**

**Acura Vehicles**  
**2003-2005 Model Year MDX**  
**2005 Model Year RL**

Dear Ms. Lewis:

On June 19, 2014 Honda Motor Co., Ltd. (HMC) decided to conduct a safety improvement campaign for the passenger's airbag inflator in certain model year Honda and Acura vehicles listed above. Honda has not made a determination that a safety defect exists, however we are choosing to participate in the collection of parts in order to support ongoing investigation.

As discussed with NHTSA ODI staff, this safety improvement campaign is not being conducted under the Safety Act. We are submitting this letter in a format consistent with the requirements of 49 CFR, Part 573 for the sake of clear communication; however Honda does not have sufficient information to reach a defect determination at this time.

**Name of manufacturer:** Honda Motor Co., Ltd. (HMC)  
Honda of America Mfg., Inc. (HAM)  
Honda of Canada Mfg. (HCM)  
Honda of the U.K. Mfg. (HUM)  
Honda Mfg. of Alabama (HMA)  
Honda de Mexico, S.A. de C.V. (HDM)

**Manufacturer's agent:** Jay Joseph  
American Honda Motor Co., Inc. (AHM)  
1919 Torrance Blvd.  
Torrance, CA 90501-2746

**Identification of vehicles:**

Certain model year Honda and Acura vehicles that were originally sold in, or ever registered in, geographic locations known for high absolute humidity: Alabama, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico and the U.S. Virgin Islands.

*See ATTACHMENT for VIN information.*

**Description of the basis for the determination of the vehicle population:**

The vehicle population was based on manufacturing records and market occurrence of the involved symptom. The VIN range reflects all possible vehicles that could potentially experience the problem.

**Identification of component:**

Component: Front Passenger Airbag Inflator  
Country of Origin: USA  
Manufacturer: T.K. Holdings, Inc.  
Contact Name: Kazuo Higuchi  
Address: 888 16<sup>th</sup> Street NW - Suite 800  
Washington, DC 20006  
Telephone No.: (202) 729-6332

**Total number of vehicles:** TBD

**Condition:**

Certain Honda and Acura vehicles operated in areas that are known for high absolute humidity may contain a passenger (frontal) airbag inflator that could produce excessive internal pressure. If an airbag deploys with excessive internal pressure, it may cause the inflator to rupture, possibly propelling metal fragments upward toward the windshield, or downward toward the front passenger's foot well and potentially causing injury to a vehicle occupant.

**Timeline:**

Jun 13, 2014 NHTSA contacted Honda to discuss the possibility of conducting a safety



improvement campaign to support the ongoing investigation of the cause of energetic passenger airbag inflators, focusing on locations in the U.S. that experience high absolute humidity levels and high temperatures.

**Campaign Plan:**

The owners of all vehicles will be contacted by mail and asked to take their vehicle to a Honda or Acura automobile dealer. The dealer will replace the passenger's airbag inflator, free of charge. Owner notification letters will reference this being conducted as a safety recall.

**The estimated date to e-mail preliminary notification to dealers:** TBD

**The estimated date to e-mail preliminary notification to dealers:** TBD

**The estimated date to provide service bulletin to dealers:** TBD

**The estimated date to begin sending notifications to owners:** TBD

**The estimated date of completion of the notification:** TBD

**Proposed owner notification letter submission:** June 19, 2014

**Manufacturer's campaign number:** TBD

Sincerely,  
AMERICAN HONDA MOTOR CO., INC.

Jay Joseph  
Senior Manager  
Product Regulatory Office  
JWJ:cm

58. On June 20, 2014, Honda Canada expanded its vehicle population recalled for defective Airbag Inflators and reported Road Safety Recall #2014242 to Transport Canada. A further 168,968 of the Vehicles were recalled. This published Road Safety Recall reads as follows:

# **Road Safety Recalls Database**

## **Transport Canada Recall #2014242**

<b>Recall Date</b>		2014/06/20
<b>Notification Type</b>		Safety Mfr
<b>System</b>		Airbag
<b>Manufacturer Recall Number</b>		
<b>Units affected</b>		168,968
<b>Category</b>		Car, light Truck & Van
<b>Recall Details</b>		
<p>On certain vehicles the passenger (frontal) airbag inflator could produce excessive internal pressure during airbag deployment. Increased pressure may cause the inflator to rupture, which could allow fragments to be propelled toward vehicle occupants, increasing the risk of injury. This could also damage the airbag module, which could prevent proper deployment. Failure of the passenger airbag to fully deploy during a crash (where deployment is warranted) could increase the risk of personal injury to the seat occupant. Correction: Dealers will inspect and, if necessary, replace the passenger airbag inflator. Note: This recall is an expansion of recall 2013111.</p>		
<b>Make</b>	<b>Model</b>	<b>Model Year(s) Affected</b>
ACURA	EL	2001 2002 2003
ACURA	MDX	2003
ACURA	TSX	2003
HONDA	ACCORD	2003
HONDA	CIVIC	2002 2003
HONDA	CR-V	2002 2003
HONDA	ELEMENT	2003
HONDA	ODYSSEY	2002 2003
HONDA	PILOT	2003
<b>Manufacturer Name</b>		<b>Toll Free Number</b>
HONDA		1-888-946-6329
		<b>Web Site</b>

59. On November 24, 2014, the Takata Defendants announced that the chemical composition of the propellant which had been used in the Airbag Inflators manufactured at the Moses Lake, Washington and Monclova, Mexico factories was being changed for the production of the Airbag Inflators which would be used for servicing the recalled Vehicles.

60. Also on November 24, 2014, Honda America admitted that it failed to report to the NHTSA, as required by law, all claims involving its vehicles which caused deaths or injury over an eleven year period. It failed to report 1,729 incidents in which its vehicles caused death or injury due to the defective Airbag Inflators. In one of these unreported incidents the Airbag Inflator ruptured and caused the death of the vehicle's driver.

61. Honda America blamed this failure on "inadvertent" data entry and computer programming errors in an independent audit of its records between 2003 and 2014.

62. Rick Schostek is Honda America's executive vice president. On November 24, 2014, Mr. Schostek said that Honda America was slow to react when it discovered its reporting to the NHTSA was flawed: "Honda acknowledges that it lacked the urgency needed to correct its problems on a timely basis."

63. The Defendants through their employees, officers, directors and agents, failed to meet the reasonable standard of conduct (care) expected in the circumstances in that:

- (a) they wrongfully and intentionally accepted the foreseeable risk of injury and loss of life and property damage to the drivers, passengers and the public because of the Airbag Inflator defect;
- (b) notwithstanding that they foresaw personal injuries and the loss of life and property of the drivers and passengers in the Vehicles, they failed to eliminate or correct the Airbag Inflator defect;
- (c) the Takata Defendants knew about the Airbag Inflator defect during the 2000 – 2002 time period and the Honda Defendants knew about the Airbag Inflator defect since 2004 but they did not announce a recall until April 10, 2013 in the case of Transport Canada Recall #2013111 and June 20, 2014 in the case of Transport Canada Recall #2014242;
- (d) they knew or ought to have known about the Airbag Inflator defect and should have announced it to the public;
- (e) they designed, developed, tested, manufactured, assembled, distributed and sold a defective Airbag Inflator;
- (f) they failed to warn the drivers, passengers and the public about the defective Airbag Inflators until April 10, 2013 in the case of Transport Canada Recall #2013111 and June 20, 2014 in the case of Transport Canada Recall #2014242;
- (g) they failed to change the design, manufacture and assembly of the Airbag Inflator in a reasonable and timely manner;
- (h) they failed to properly test the Airbag Inflator;
- (i) they failed to establish any, or any adequate, procedures to ensure that the design of the Airbag Inflator was appropriate;
- (j) they failed to establish any, or any adequate, procedures for evaluating the design defects of the Airbag Inflator;
- (k) they failed to properly instruct their employees to evaluate the injuries, deaths and accidents involving the Airbag Inflator and its excessive internal pressure during deployment;

- (l) they failed to review and evaluate the accidents and complaints about the Airbag Inflator and excessive internal pressure during deployment;
- (m) they failed to initiate timely review, evaluation and investigation of the Airbag Inflator and the excessive internal pressure following complaints, injuries and deaths if a malfunction occurred;
- (n) they knew or ought to have known about the defect in the Airbag Inflator since during the 2000 - 2002 time period but they kept this defect a secret;
- (o) they failed to review, evaluate, and maintain all records of written and oral complaints relative to the reliability, safety, effectiveness and performance of the Airbag Inflator;
- (p) they failed to implement a safety recall until April 10, 2013 in the case of Transport Canada Recall #2013111 and June 20, 2014 in the case of Transport Canada Recall #2014242;
- (q) they failed to disclose to the owners and drivers of the Vehicles and to the public that, in some crashes, airbags did not fully deploy because the Airbag Inflator could rupture;
- (r) they knew or ought have known that the Vehicles suffered from this design defect in the Airbag Inflator;
- (s) they failed to conform with good manufacturing practices;
- (t) they hired incompetent personnel;
- (u) they failed to properly supervise their employees;
- (v) they failed to train their employees in proper documentation process;
- (w) they failed to encourage discussion of safety issues, including discussion of defects and safety consequences of defects;
- (x) they knew or ought to have known from reports to them, that there was a chance of excessive internal pressure upon deployment of the Airbag Inflator and risk of safety to the drivers, passengers and the public;
- (y) they failed to report this dangerous Airbag Inflator defect to the owners and drivers of the Vehicles and to the public;
- (z) they failed to protect the Class Members and the public;

- (aa) they failed to make full, frank and complete disclosure to the regulators, the public, their customers and the Class Members;
- (bb) they failed to institute a proper risk/management system;
- (cc) they failed to advise the owners and drivers of the Vehicles, until April 10, 2013 in the case of Transport Canada Recall #2013111 and June 20, 2014 in the case of Transport Canada Recall #2014242, that they should have their vehicles inspected to replace the Airbag Inflator;
- (dd) they failed, until April 10, 2013 in the case of Transport Canada Recall #2013111 and June 20, 2014 in the case of Transport Canada Recall #2014242, to adequately warn owners and drivers of the Vehicles that there was a serious risk of injury associated with the Vehicles; and
- (ee) they failed to exercise reasonable care and judgment.

#### **REGULATORY INVESTIGATION INTO THE TAKATA DEFENDANTS**

64. On November 7, 2014, U.S. lawmakers asked the U.S. Justice Department to open a criminal investigation into the Takata Defendants' destruction of the previously described test results of the 50 defective Airbag Inflators from 2004.

65. On November 13, 2014, a U.S. federal grand jury commenced the criminal investigation by subpoenaing the Takata Defendants for documents relating to the destruction of these test results. The U.S. Justice Department's criminal investigation is ongoing.

66. On November 21, 2014, the Japanese Transport Ministry ordered Takata to conduct an internal investigation into the defective Airbag Inflators and comprehensively explain their defect. Takata's internal investigation is ongoing.

**ADMISSIONS BY TAKATA'S CEO**

67. Shigehisa Takata is Takata's Chairman and CEO. On November 13, 2014, Mr. Takata apologized to the Canadian and U.S. customers, the Class Members and the public for this dangerous Airbag Inflator safety defect. He admitted that: "[T]he moisture absorption control of the gas generating agent in some driver seat airbags had not been correctly implemented at the time of manufacture, as a result of which an inflator canister may rupture when the airbag deploys... We deeply regret that the problem in our airbags have caused problems."

68. On December 1, 2014, Mr. Takata also apologized for the loss of life caused by the defective Airbag Inflators: "Takata deeply regrets the injuries and fatalities that have occurred in accidents involving ruptured airbag inflators."

69. Mr. Takata's statements are an admission that the Takata Defendants were in breach of the standard of conduct (care) in manufacturing the Airbag Inflators. They are also an admission of a breach of the standard of conduct (care) in the safety aspects to the drivers and passengers in the Vehicles to the public in Canada and the U.S. and to the regulators in Canada and the U.S.

**GENERAL AND SPECIAL DAMAGES**

70. As a result of the dangerous defects in the Airbag Inflator in the Vehicles, and the failure by the Defendants to disclose this safety issue about the Airbag Inflator until April 10, 2013 in the case of Transport Canada Recall #2013111 and June 20, 2014

in the case of Transport Canada Recall #2014242, the Class has suffered damages. The value of each of the Vehicles is reduced. Each Class Member must expend the time to have his/her Vehicle repaired and be without their motor vehicle. The Defendants should compensate each Class Member for their losses and inconvenience. Some Class Members have incurred out of pocket expenses for, among other things, alternative transportation and prior repairs to the Airbag Inflator.

71. The Class Members are unable to have their Airbag Inflator repaired immediately because the Defendants do not have the parts and service capability to repair their Vehicles. The Class Members must drive a dangerous Vehicle. They are entitled to have the Defendants supply a replacement vehicle or a “courtesy car” until Honda Canada fixes the Airbag Inflators at no cost to the Class Members as a matter of course, and not only at the request and effort of the Class Members.

72. The Class Members have driven their Vehicles less than they otherwise would due to fear of being in an accident. Some of the Class Members have taken taxis, used public transportation or imposed on friends, family and others. The Class Members have incurred expenses.

73. The Plaintiffs plead that the Class Members’ damages were sustained in Ontario and in the rest of Canada.



## **PUNITIVE DAMAGES**

74. The Defendants' conduct described above was arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, secretive, callous, willful, disgraceful, in contemptuous disregard of the Class' rights and intentionally disregarded the interests of the Class Members and the public. For such abhorrent conduct and motivated by economic consideration, the Defendants are liable to pay punitive and aggravated damages.

## **THE RELEVANT STATUTES**

75. The Plaintiffs plead and rely upon the provisions of the *CPA*, *CJA* and the *Motor Vehicle Safety Act*.

## **PLACE OF TRIAL**

76. The Plaintiffs propose that this action be tried in the City of Windsor.

## **SERVICE**

77. This originating process may be served without court order outside Ontario in that the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g)); and

(b) against a person ordinarily resident or carrying on business in  
Ontario (rule 17.02(p)).

December 5, 2014

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Plaintiffs

-and- TAKATA CORPORATION et al.  
Defendants

Court File No. CV-14-21482 CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
WINDSOR

**STATEMENT OF CLAIM**

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