

Products Liability Law Daily Wrap Up, REGULATORY ACTIVITY—NOTICES—MOTOR VEHICLE EQUIPMENT—NHTSA denies GM's consolidated petition for inconsequential noncompliance relating to Takata airbags, (Dec. 3, 2020)

Products Liability Law Daily Wrap Up

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GM failed to meet its burden to demonstrate that the defect was inconsequential to motor vehicle safety.

The National Highway Traffic Safety Administration (NHTSA) denied a consolidated petition submitted by General Motors, LLC (GM) seeking a decision that an equipment defect in certain Takata frontal driver and passenger-side airbag inflators that were supplied to GM for use in certain GMT900 vehicles was inconsequential as it relates to motor vehicle safety due to differences in inflator design and vehicle integration, and a determination that GM should be relieved of its notification and remedy obligations. The affected vehicles include approximately 5.9 million model year 2007-2014 GMT900 vehicles that contain "SPI YP" and "PSPI-L YD" inflator variants. GMT900 is a GM-specific vehicle platform that forms the structural foundation for a variety of GM light- and heavy-duty pickup trucks and sport utility vehicles, including: Chevrolet Silverado 1500, GMC Sierra 1500, Chevrolet Silverado 2500/3500, GMC Sierra 2500/3500, Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, GMC Yukon, GMC Yukon XL, Cadillac Escalade, Cadillac Escalade ESV, and Cadillac Escalade EXT (*NHTSA Notice*, [85 FR 76159](#), November 27, 2020).

Pursuant to its obligations under an amendment to a November 2015 [Consent Order](#), TK Holdings Inc. (Takata) timely submitted defect information reports (DIRs) in May 2016 (NHTSA Recall Notices, Nos. 16E042, 16E043, and 16E044) pertaining to non-desiccated passenger inflators, designated as types SPI YP and PSPI-L YD, that were installed as original equipment on certain motor vehicles manufactured by GM. The Takata filing triggered GM's obligation to file a DIR for the affected GM vehicles, and the company ultimately submitted four timely DIRs over a four-year period and four petitions seeking a determination that the equipment defect determined to exist by Takata was inconsequential as it relates to motor vehicle safety in the GMT900 vehicles. Because each petition was virtually identical, the agency consolidated them into one petition [see *Products Liability Law Daily's* November 28, 2016 [analysis](#); *Products Liability Law Daily's* September 12, 2017 [analysis](#); *Products Liability Law Daily's* April 9, 2018 [analysis](#); *Products Liability Law Daily's* June 19, 2019 [analysis](#)].

Petition. The alleged defect identified by Takata involved frontal driver and passenger airbag inflators that contain a phase-stabilized ammonium nitrate (PSAN)-based propellant and do not contain a moisture-absorbing desiccant. GM asserted two primary arguments for why the defect should be deemed inconsequential in GMT900 vehicles. First, GM contended that there are multiple "unique" design differences in the YD and YP variant inflators used in GMT900 vehicles that result in a reduced risk of rupture. Second, GM argued that the physical environment in GMT900 vehicles "better protects the front-passenger inflator from the extreme temperature cycling that can cause inflator rupture." In support of its claims, GM submitted testing and field data analyses, aging studies, predictive modeling, and risk assessments conducted by third parties.

NHTSA decision. After considering the 302 comments posted to the docket as of November 19, 2020 (none of which supported granting the petition) and the multitude of supporting documents submitted by GM, NHTSA determined that GM had not demonstrated that the defect was inconsequential to motor vehicle safety. The threshold of evidence necessary to prove the inconsequentiality of a defect such as this one—involving the potential performance failure of safety critical equipment—is very difficult to overcome. GM bore a heavy burden, and the evidence and argument provided suffered from numerous, significant deficiencies. Notably, GM's

arguing that the GMT900 inflators are "safer" than other inflators with the same defect did not address the question of whether the defect is inconsequential to safety. Thus, GM's focus on whether the allegedly defective part was likely to fail had very little bearing on whether the alleged defect was a safety concern. Accordingly, the petition was denied, and GM was obligated to provide notification of, and a remedy for, the defect.

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