

United States Senate

WASHINGTON, DC 20510

January 12, 2017

The Honorable Loretta Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Lynch:

We write regarding recent reports that the Department of Justice (DOJ) may be in the final stages of negotiating a criminal settlement with Takata Corporation—the airbag supplier responsible for the unprecedented recall affecting 42 million vehicles in the United States.¹ Defective Takata airbags can violently explode during a collision and spew shrapnel that can kill or seriously injure the driver or other vehicle occupants. We are concerned that a settlement that does not fully consider the most current set of facts may have the unintended effect of undermining our efforts to speed up the lax and laggard pace of this recall and to ensure adequate compensation for victims. Furthermore, we believe that any settlement reached should include a stiff punishment against the individual Takata executives responsible for a defect that has resulted in 11 deaths and more than 180 injuries in the United States.

While we strongly support criminal prosecution, we are deeply concerned that the DOJ settlement appears to only target Takata Corporation and no executives. As you know, Takata knew that ammonium nitrate, the problematic propellant at the center of the Takata airbag defect, was prone to failure as early as 2001, and yet it hid these problems and continued to sell dangerous inflators. There is also evidence that Takata employees falsified and manipulated test data to give its inflators the appearance of safety and efficacy. In addition, publicly reported e-mails show that Takata's Chairman and Chief Executive Officer, Mr. Shigehisa Takada, knew as early as 2009 that the ammonium nitrate in his company's inflators could become unstable, leading to lethal consequences.²

Takata's current management has also persistently thwarted efforts to expeditiously remediate the Takata airbag crisis. As any consumer waiting months or years for a replacement airbag knows, Takata continues to show itself incapable of designing and manufacturing safe replacements at an acceptable rate. In addition to continuously obfuscating the scope of the problem to regulators and lawmakers, Takata has refused to share schematics and other critical information that could help speed up and expedite the safe replacement of defective airbag inflators. For example, we have been informed that Takata's existing management has blocked the due diligence of potential investors, thereby delaying the sale of the company and the speedy

¹ <http://www.wsj.com/articles/takata-nears-settling-u-s-criminal-probe-over-defective-air-bags-1482942169>

² 2009 email from Takata propellant engineer Pareshe Khandhadia, http://www.nytimes.com/2016/04/14/business/as-takata-costs-soar-in-airbag-recall-files-show-early-worries-on-financial-toll.html?_r=0

restructuring that is needed to benefit affected consumers and complete the recall. These actions jeopardize consumer safety. Moreover, a criminal settlement with the Takata Corporation without a thorough examination into individual culpability is also at odds with DOJ's own directives on individual criminal liability.³

Furthermore, as you may know, Takata is actively soliciting new investors and contemplating bankruptcy or similarly major restructuring in order to keep factories running and manufacturing replacement airbags.⁴ It is vital that any such restructuring protect consumers, the company's ability to develop and deploy safe replacement airbags, and deter future similar wrongdoing. Since bankrupt corporations pay criminal fines out of the pockets of their new creditors—not their executives or shareholders—we are concerned that a settlement that does not hold individual executives accountable will not effectively halt wrongdoing and deter future misconduct. Rather, it would just transfer the punishment.

As reported, the pending criminal settlement with Takata appears drastically insufficient to meet either the safety needs of the motoring American public or the goals of criminal prosecution. Accordingly, we urge you to refrain from concluding a criminal settlement until you have conducted a full investigation into individual criminal liability and considered how the settlement may affect the victims of the fraud – who will ultimately bear the financial burden of criminal fines if Takata files for bankruptcy. In addition, we urge you to investigate whether Takata's ongoing actions are delaying the quick replacement of dangerous airbags. Any criminal settlement should bring this crisis to a full resolution that prioritizes safety and meets the needs of all those affected by Takata's misbehavior.

Thank you for your consideration, and we look forward to hearing from you on this important consumer safety matter.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



EDWARD J. MARKEY
United States Senate

Cc: Hon. Sally Yates, Deputy Attorney General
Hon. Leslie Caldwell, Assistant Attorney General, Criminal Division

³ See Yates Memo, <https://www.justice.gov/dag/file/769036/download>; 2016 US Attorneys' Manual §9-28.210, <https://www.justice.gov/usam/usam-9-28000-principles-federal-prosecution-business-organizations#9-28.210>

⁴ <http://www.nytimes.com/2016/05/26/business/dealbook/takata-restructuring-airbags.html>