

COPY

TIMOTHY C. FOX
Montana Attorney General
CHUCK MUNSON
Assistant Attorney General
555 Fuller Avenue
P.O. Box 200151
Helena, MT 59620-0151
Telephone: (406) 444-2026
Fax: (406) 442-1894
CMunson@mt.gov

FILED

AUG 24 2020

ANGIE SPARKS, Clerk of District Court
By ~~K. KRESGE~~ Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT
LEWIS AND CLARK COUNTY**

STATE OF MONTANA,

Plaintiff,

v.

**AMERICAN HONDA MOTOR CO., INC. and
HONDA OF AMERICA MFG., INC.,**

Defendants.

Cause No. C.D.V. 2020-494

COMPLAINT

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEVE

Plaintiff, State of Montana, acting by and through Attorney General Timothy C. Fox, brings this action against American Honda Motor Co., Inc. and Honda of America Mfg., Inc. (hereafter referred to collectively as “Honda” or “Defendants”), and for cause of action states as follows:

**I.
PARTIES**

1.1 Plaintiff, Attorney General Timothy C. Fox, brings this action through the Montana Office of Consumer Protection, Office of the Attorney General, in the name of the State of Montana, under the authority granted by the Montana Unfair Trade Practices and Consumer

Protection Act, Mont. Code Ann. § 30-14-101, et seq. (hereafter referred to as MTCPA), upon the grounds that Defendants have engaged in unfair, false, misleading, and/or deceptive acts and practices in the course of trade and commerce. Pursuant to Mont. Code. Ann. § 30-14-101, et seq. of the MTCPA, the Attorney General is authorized to seek injunctive relief, penalties, and consumer redress for conduct declared unlawful under Mont. Code. Ann. § 30-14-103 of the MTCPA.

1.2 Defendant American Honda Motor Co., Inc., is a corporation located at 1919 Torrance Boulevard, Torrance, California 90501.

1.3 Defendant Honda of America Mfg., Inc., is a corporation located at 24000 Honda Parkway, Marysville, Ohio 43040.

II. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over the subject matter of this action and over Defendants, pursuant to Mont. Code An. § 3-5-202.

2.2 Venue for this action properly lies in Lewis and Clark County, pursuant to Mont. Code Ann. § 30-14-111(3), because Defendant transacts business in Lewis and Clark County, the transactions out of which this action arose occurred in Lewis and Clark County, and this action is brought by the Attorney General, on behalf of the State of Montana..

III. PUBLIC INTEREST

3.1 Plaintiff, the State of Montana, has reason to believe that Defendants are engaging in, have engaged in, or are about to engage in acts or practices declared to be unlawful under

Mont. Code. Ann. § 30-14-103; therefore, the Montana Attorney General asserts that these proceedings are in the public interest.

IV. TRADE AND COMMERCE

4.1 Honda, at all times described below, is a person engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by Mont. Code Ann. §§ 30-14-103 and -102(8).

V. ACTS OF AGENTS

- 5.1 Whenever in this Complaint it is alleged that Honda did any act, it is meant that:
- a. Honda performed or participated in the act, or
 - b. Honda’s officers, agents, employees, affiliates, or subsidiaries performed or participated in the act on behalf of and under the authority of Honda.

VI. BACKGROUND

6.1 Since December 2015, an Attorneys General Multistate Working Group has been engaged in an investigation of Honda’s use and installation of frontal Takata Airbags in the passenger compartment of its motor vehicles. Attorney General Timothy C. Fox on behalf of Plaintiff, the State of Montana, is a member of the Multistate Working Group.¹

¹ “Multistate Working Group” shall mean the Attorneys General of Alabama, Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. With regard to Montana, any references to the Attorney General or Attorneys General shall mean the Montana Office of Consumer Protection, Office of the Attorney General of Montana.

6.2 Contemporaneously filed with this Complaint is a Civil Consent Order and Judgment that the Parties hereto respectfully request that this Court sign and enter as the final resolution of this action. Plaintiff and Defendants, by their respective counsel, have agreed to resolve the issues raised in the investigation without trial or adjudication of any issue of fact or law and without admission of any wrongdoing or admission of any violations of the MTCPA or any other law as alleged by Plaintiff. Upon the entry of Civil Consent Order and Judgment by this Court, no Answer is required and no additional discovery will be conducted.

6.3 Judgments taken by Multistate Working Group members against the Defendants will be filed in the respective courts of each state.

VII. ALLEGATIONS

7.1 At all times relevant to the allegations made in this Complaint, Honda has been in the business of manufacturing private passenger vehicles, among other motor vehicles, for sale and lease in the United States. Honda effectuates the sale and lease of these vehicles through an extensive network of dealerships. As part of its business, Honda engages in nationwide advertising and marketing efforts in order to promote the sale or lease of its products to consumers.

7.2 Honda private passenger vehicles include critical safety features, such as seatbelts and airbags. Airbags are strategically installed in locations throughout the passenger compartment of the vehicle to maximize their safety effectiveness. Each airbag's design depends on its location within the passenger compartment. Frontal airbags can be the most critical airbag in circumstances that result in deployment.

7.3 Honda has advertised, promoted, and represented, in the media and in communications to consumers, the performance of its airbags, the safety benefits of its airbags,

and the overall safety of its vehicles. For example, Honda created a video commercial featuring a demonstration involving a watermelon. In that advertisement, airbags are set up in a way that objects could be dropped on them from overhead while the airbags simultaneously deployed. In the first segment of the video, a watermelon is dropped on a Honda airbag, and it deployed in such a way that the watermelon was cushioned and did not shatter. In the second segment, when a watermelon is dropped on a non-Honda airbag, the watermelon shattered when the airbag did not deploy properly.

7.4 At all times relevant hereto, Honda purchased frontal airbag assemblies from Takata Corporation (“Takata”), a Tokyo, Japan-based corporation, for installation by Honda in various Honda and Acura model vehicles. During the time that Honda was purchasing airbags from Takata, Honda was a fractional owner of Takata.

7.5 At some point in 2000, Takata began manufacturing the airbags utilizing ammonium nitrate, a highly volatile and unstable substance, as the propellant. At the time that Takata began using ammonium nitrate, there was little to no industry experience with using it as a propellant in airbags, although it was widely understood that ammonium nitrate was unstable and could degrade because of environmental conditions, such as heat and humidity. As evidenced by later airbag ruptures, degraded ammonium nitrate ignited more quickly and forcefully than non-degraded ammonium nitrate, creating so much excess pressure that the airbags ruptured, sending metal fragments into a vehicle’s passenger compartment.

7.6 Even before Takata began manufacturing airbags utilizing ammonium nitrate, Takata had revealed its then-new ammonium nitrate-based propellant formula to Honda on September 7, 1999. Honda was Takata’s first customer of the Airbags, installing them in model

year 2001 vehicles. (The term “Airbags” shall hereafter refer to frontal airbag assemblies which utilized ammonium nitrate as a propellant and that Honda purchased from Takata).

7.7 From the outset, Honda was aware of information indicating that the Airbags were problematic and posed an unreasonable safety risk as demonstrated by explosive failures during testing in October 1999 and January 2000, one of which was powerful enough that the force of the blast injured an observer from Honda. Honda had other indications of problems as well, including, but not limited to, a rupture in May 2004 involving an Airbag installed in a Honda Accord.

7.8 In 2007, Honda became aware of at least three other field ruptures but failed to timely report these ruptures to the National Highway Traffic Safety Administration (“NHTSA”). Concerned that the Airbags were incurring a larger number of field ruptures than other types of airbags, that same year, Honda and Takata formed a joint committee to identify the root cause(s) of the ruptures. This committee ultimately determined that Honda should initiate a recall for the Airbags.

7.9 In 2008, Honda initiated a recall of only a small set of Airbags that were manufactured during a narrow time period.

7.10 In 2009, Honda reported the 2007 field ruptures to NHTSA. Following a larger recall that same year, a Honda engineer identified serious concerns with the Airbags: In July 2009, he informed his colleagues and superiors that the Airbags’ inflator modules contained serious safety deficiencies. In response to the engineer’s concerns, Honda and Takata redesigned the Airbags’ inflator modules and began installing the redesigned Airbags in MY2010 Honda vehicles. Honda did not, however, inform regulators, including NHTSA, of the change, nor did it warn owners of vehicles with the original, deficiently designed Airbags of these safety concerns.

7.11 From 2009 on, the original Airbags continued to rupture in the field, and passengers continued to be killed or seriously injured by the shrapnel thrown off by the shattered inflator modules.

7.12 The mounting and recurrent rupture incidents culminated in the repeated, separate recalls of Honda vehicles in discrete sets over the course of seven years until, eventually, in 2015, widespread recalls of the Airbags were initiated.

7.13 In the United States, over 12.9 million vehicles containing the Airbags, including 28,445 in the State of Montana, have been recalled. Repairs performed pursuant to these recalls are still being performed today.

7.14 Ultimately, on January 13, 2017, Takata pled guilty to wire fraud in a federal court case brought by the United States Department of Justice in relation to its falsifying test data.

7.15 Despite the early and continuing indications that the Airbags posed an unreasonable safety risk, including such indications as the concerns of Honda's own engineers, the ever-increasing number of recalled Airbags, and the mounting human cost, Honda did not break with Takata and failed to adequately warn its consumers of the dangers posed by the Airbags until it learned of the misconduct that formed the basis of the criminal allegations against Takata.

VIII. VIOLATIONS OF CONSUMER LAW

8.1 The State of Montana re-alleges the facts above and incorporates them herein by reference.

8.2 Honda has violated Mont. Code Ann. § 30-14-101, et seq. by:

- a. advertising, promoting, communicating or otherwise representing in a way that is unfair, false, misleading, and/or deceptive (a) its Airbags, (b) the safety

- of its Airbags, (c) the safety of any components of its Airbags, including, but not limited to, ammonium nitrate, and (d) the overall safety of its vehicles, in trade or commerce, in violation of Mont. Code Ann. § 30-14-103;
- b. representing that its Airbags or any components of its Airbags, including, but not limited to, ammonium nitrate, have uses, benefits and characteristics which they do not have, in violation of Mont. Code Ann. § 30-14-103;
 - c. representing that its Airbags or any components of its Airbags, including, but not limited to, ammonium nitrate, are of a particular standard, quality, or grade, when they are of another, in violation of Mont. Code Ann. § 30-14-103; and,
 - d. failing to timely notify or warn consumers who owned or were considering the purchase of a Honda vehicle that the Airbags could rupture and possibly cause injury or death, when such information became known to, or should have been known to, Honda, in violation of Mont. Code Ann. § 30-14-103.

8.3 Honda committed a separate and independent violation of the Mont. Code Ann. § 30-14-101, et seq. through each and every unfair, deceptive, false, or misleading representation, or omission of material information.

IX.

PRAYER/REQUEST FOR RELIEF

WHEREFORE PLAINTIFF, THE STATE OF MONTANA, PRAYS FOR THE FOLLOWING RELIEF,

9.1 Plaintiff, the State of Montana, Requests that this Court will enter a Permanent Injunction and Final Judgment, as follows:

- a. finding that this matter is in the public interest;
- b. finding that Defendants have engaged in trade or commerce within the meaning of Mont. Code Ann. §§ 30-14-102(8) and -103;
- c. finding that nothing in this Complaint shall be construed as a claim that relieves Defendants of their obligations to comply with all state, local, and federal laws, regulations or rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation or rule;
- d. finding that Defendants committed a separate and independent violation of the Mont. Code Ann. § 30-14-101, et seq. through each and every unfair, deceptive, false, or misleading representation, or omission of material information;
- e. permanently enjoining Defendants and their subsidiaries and affiliates, and in their official capacities, all present and former officers, directors, agents, employees, and representatives of such entities, from advertising, promoting, or otherwise representing in any way that is false, deceptive, or misleading (a) their airbags, (b) the safety of their airbags, (c) the safety of any components of their airbags, including, but not limited to, ammonium nitrate, or (d) the overall safety of their vehicles, in violation of Mont. Code Ann. § 30-14-101, et seq.;
- f. permanently enjoining Defendants and their subsidiaries and affiliates, and in their official capacities, all present and former officers, directors, agents, employees, and representatives of such entities, from engaging in acts or practices which constitute violations of Mont. Code Ann. § 30-14-101, et seq.

in connection with: (1) the offer or sale of Honda vehicles equipped with airbags, to the extent Honda provides any guidance, directive, notice or other communication to dealers or consumers concerning the offer or sale of such vehicles, or (2) the design, testing, purchase or installation of airbags in Honda vehicles; and

- g. permanently enjoining Defendants and their subsidiaries and affiliates, and in their official capacities, all present and former officers, directors, agents, employees, and representatives of such entities from failing to timely disclose to consumers including in advertising, or any other communication, matters that implicate the safety of their airbags, or components of such airbags;
- h. requiring Defendants to pay civil penalties of up to \$10,000.00 per violation for each and every violation of Mont. Code Ann. § 30-14-101, et seq.; and
- i. requiring Defendants to pay all costs of Court, costs of investigations, and reasonable attorneys' fees pursuant to Mont. Code Ann. § 30-14-133(3).

9.2 Plaintiff further prays for post-judgment interest.

9.3 Plaintiff further prays that this Court grant any other and further relief to which

Plaintiff may be justly entitled.

Dated this 25th day of August, 2020.

TIMOTHY C. FOX
MONTANA ATTORNEY GENERAL

Chuck Munson

CHUCK MUNSON
Assistant Attorney General
P.O. Box 200151
Helena, MT 59620-0151
406-444-2026
CMunson@mt.gov