

United States Senate

WASHINGTON, DC 20510

September 30, 2016

The Honorable Mark Rosekind
Administrator
National Highway Traffic Safety Administration (NHTSA)
1200 New Jersey Avenue SE, West Building
Washington, DC 20590

Dear Administrator Rosekind:

We write with growing concerns that Takata may be unable to execute the terms of its consent decree with NHTSA, amid news that the company is soliciting new investors or contemplating bankruptcy or other major restructuring. The terms of any such restructuring could endanger the safety of millions of American drivers in vehicles equipped with Takata airbags, and we urge NHTSA to take all necessary steps to protect against such an outcome.

Late last year, we wrote you regarding our concerns about Takata's financial solvency in light of the announcements made by multiple automakers to drop Takata as the supplier of airbags to their vehicles. Our concerns that consumers could be left with defective airbags that no one will be forced to fix remain. Last December, you responded to our letter, stating that our core concerns are "addressed" by the terms of NHTSA's consent decree, that you had "no reason to believe" that the company was not financially viable, or that it was contemplating bankruptcy. You also stated that "the Agency will remain vigilant in its oversight of the coordinated remedy of defective air bag inflators to ensure that all affected vehicles are equipped with a safe and effective air bag."

We have reason to believe that the circumstances surrounding Takata's financial viability have deteriorated. On August 26, 2016, media reports¹ stated that Takata "has shortlisted six or seven companies, including a competitor and private-equity funds, as potential financial investors to bail out the Japanese car-parts maker," and that the "shortlisting is a sign of progress in protracted efforts to restructure Takata." On September 28, 2016, an article² in *The Wall Street Journal* said that Takata was engaged in negotiations with the Department of Justice to resolve allegations of criminal wrongdoing, and noted that analysts have estimated that additional recalls could add \$6 billion to its pre-existing liabilities in this matter.

We remain extremely concerned that in the event of Takata's bankruptcy or significant restructuring, it could be consumers who are left with the costs of repairing their defective vehicles, and additionally that past or future victims of this safety defect may also be left behind as other creditors lay

¹ <http://www.reuters.com/article/us-takata-restructuring-idUSKCN11119D?type=companyNews>

² <http://www.wsj.com/articles/takata-in-talks-to-resolve-allegations-of-criminal-wrongdoing-over-faulty-air-bags-1475055181>

first claim to Takata's assets. We are also concerned that any bankruptcy or restructuring may not occur in a manner that prioritizes Takata's ability to design and deploy safe replacements for the defective air bags over the short-term financial interests of any potential investor or buyer. There appears to be precedent for regulatory agencies actively asserting their authority in bankruptcy proceedings in furtherance of their statutory missions.³ This is especially true in the motor vehicle safety context, where such regulatory power is intended "to ensure that consumers are adequately protected from any safety defect or noncompliance determined to exist in [a] manufacturer's products."⁴ Therefore, we encourage NHTSA to use every tool available to them to ensure that the Takata recalls are safe, effective and paid for, and to protect unduly harmed consumers and potential claimants.

We request that you quickly inform us as to how you intend to assure that the terms of NHTSA's consent decree will be complied with under any future bankruptcy, restructuring or new investment arrangements. Specifically please inform us how NHTSA will:

1. Ensure the retention of the technological and engineering capacity to design and deploy safe replacement air bags at a rate that complies with or beats the deadlines included in the consent decree;
2. Ensure that any victims of past or future deaths or injuries caused by defective Takata airbags will be able to claim and receive any compensation to which they are entitled prior to the disbursement of funds to any other creditors or investors; and
3. Ensure that funds needed to compensate automakers or consumers for any air bag replacements that are subject to the recalls are also available prior to the disbursement of funds to any other creditors or investors.

Thank you for your prompt consideration of these requests. Please respond to our offices no later than close of business on October 14, 2016.

Sincerely,



Edward J. Markey
U.S. Senator



Richard Blumenthal
U.S. Senator

Cc: Mr. Kevin Kennedy
Executive Vice President, North America
TK Holdings, Inc. (Takata)

³ In re Calpine Corp., 337 B.R. 27, 34–35 (S.D.N.Y. 2006)

⁴ 49 U.S.C. § 30120A.