



**COMMENTS IN SUPPORT OF
THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION'S
INITIAL DECISION TO DECLARE 52 MILLION ARC AUTOMOTIVE
AIRBAG INFLATORS DEFECTIVE
Public Meeting Held October 5, 2023
Docket No. NHTSA-2023-0038**

by

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Thank you for the opportunity to support NHTSA's Initial Decision and to urge an immediate safety recall of defective airbag inflators in tens of millions of cars on American roads. I commend NHTSA's Office of Defects Investigation for the courage to stand up and fight for consumers despite the agency's decade-long lack of political leadership and stubborn resistance from ARC Automotive and its powerful customers, the motor vehicle manufacturers.

I speak only for myself today, entirely *pro bono*. I represent no one affected by NHTSA's decision in this matter. I have shared my 40 years of experience with airbag issues purely as a matter of conscience. I acted first as an advocate for the airbag mandate in the early 1980s, in Congress and at the Supreme Court. More recently, I was an advisor to Takata Corporation, whose criminal acts have slaughtered dozens of people so far and forced the biggest recall of any consumer product in history. I documented every step in the Takata fiasco and named names in my book, **KILLER AIRBAGS: THE DEADLY SECRET AUTOMAKERS DON'T WANT YOU TO KNOW**, which was recently named a top ten corporate crime book.

ARC's reaction to NHTSA's investigation into their own exploding airbag inflators overwhelms me with a sense of déjà vu. I have to wonder if they are using my book as a "how-to" manual instead of the dire warning I meant it to be. Chinese-owned ARC is doing exactly what Takata's Japanese owners did in the 2010s. Despite clear indications that their "flash-welding" manufacturing process is a defective design, ARC pretends it is dealing with nothing more than an occasional production glitch. The company hopes to limit recalls to certain lots of inflators made in certain places at certain times instead of replacing or at least inspecting all units made from the design.

ARC's customer, General Motors, has always been a master at this game. ARC deaths and injuries to date have occurred in their Chevy Traverse SUV but they have recalled only a tiny fraction of those vehicles. It is 2008 all over again, when Honda started out recalling just 4,000 Civics with deadly Takata airbags and only grudgingly admitted in 2010 that the "recall population" was more than one million vehicles. It took NHTSA until 2017 to get Takata to admit that the explosive they put in their inflators was a calamitous design choice and necessitated a recall of at least 70 million vehicles.

Takata's first inflator rupture occurred in 2003, but the company stalled and blindsided NHTSA for more than 10 years by claiming it could not identify a "root cause" behind the ever-rising body count. Today, ARC's chief American executive, Steve Gold, is arguing, based on gobbledygook about "failures modes" and "decision tree root cause analysis," that NHTSA cannot order a recall. He argues NHTSA, despite a nine year-long investigation, cannot say ARC's inflators contain a "systemic safety-related defect." As NHTSA has pointed out repeatedly, the agency does not need to show a cold engineering calculation to declare a vehicle component defective. Congress gave the agency discretion to make a more qualitative, consumer-friendly assessment. If the agency decides a vehicle component poses an "unreasonable risk" to vehicle occupants, due to its design,

construction or performance, those vehicles must be recalled. What could be more unreasonable than a driver being killed, not saved, by her own safety equipment?

Takata taught me a list of euphemisms to describe their defect. My favorite was “anomalous deployment.” Today, ARC talks about “manufacturing anomalies,” “isolated incidents” and “one-offs.” By the time a “one-off” becomes a “nine-off” and someone else is killed – and another family is turned upside down – that’s hard to sell to the bereaved. Jacob Tarvis, whose mother was essentially decapitated by an exploding ARC inflator last year, and his attorneys who spoke at today’s meeting, made it clear his family will not be brushed off. If factual allegations in the class actions against ARC prove to be true, its executives will face more than just a moral reckoning.

NHTSA should, of course, finalize its Initial Decision and declare the referenced population of 52 million ARC inflators to be defective and otherwise compel the vehicle manufacturers who put them in steering wheels and dashboards to issue safety recall notices. Recall notices to consumers are *necessary* but not *sufficient* to stem the rising count of deaths and severe injuries, however. Today, a full decade into the Takata recalls, 7.2 million of the most dangerous Takata airbags are still on the road. Almost half of those are in GM cars. The agency promised to recall an additional 30 million cars with “desiccated” airbags that Takata built with a slightly different design unless carmakers affirmatively proved them to be safe. Neither has happened.

The motor vehicle industry – ranging from carmakers to auto auctions to new and used car dealers – have conveniently ignored specific recommendations from a NHTSA-appointed Special Monitor on how to save lives by increasing recall repair rates. The vehicles with defective ARC airbags are at least five years old, so barely one out of five of them likely will ever be replaced.

The bottom line is that the public may soon be driving up to 90 million cars with killer airbags that have been recalled but not fixed. This is an unprecedented public safety crisis, on top of a consumer disaster, that requires a comprehensive response. For starters, NHTSA must do more

to let people know when their lives are endangered by various types of auto safety defects. The agency's VIN-Lookup Tool and SaferCar app are good as far as they go, but every car owner should know about them and use them. Everyone should register their 17-digit vehicle identification number (VIN) with NHTSA and thereby get electronic notice whenever they get hit by a recall. Paper, snail-mail notices are ancient history and might as well be abandoned.

Unfortunately, we live in an age of do-it-yourself auto safety. Owners must take matters into their own hands. Whenever they find out their car has been recalled, for any type of safety-related defect, owners must call the appropriate franchised dealer immediately and schedule an appointment for a free repair. Consumer tips, a direct link to NHTSA's SaferCar app and the only published list of Takata airbags that have not yet been recalled are available for free at www.killerairbags.com.

Respectfully submitted,

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