

AUTOMOTIVE

Tesla NDA under investigation by law firm advocating consumer rights

June 22, 2016



Aerial view of Tesla's Model S

By FORREST CARDAMENIS

U.S. electric automaker Tesla Motors is under fire for a term in a goodwill agreement related to a potentially faulty suspension.

Subscribe to **Luxury Daily**
Plus: Just released
State of Luxury 2019 **Save \$246** ▶

Consumer-rights law firm Hagens Berman is investigating the agreement, which allegedly restricts the rights of owners in the event of defects or other wrongdoings on the part of Tesla. Mandatory silences are becoming a more common tactic among businesses and have a history in the automotive sector, but the allegations contradict Tesla's transparent and responsible image.

"The goals are to find out how often Tesla is covering up and to expose the practice," said Steve Berman, managing partner at Hagens Berman. "In addition, the cover up may be hiding a dangerous defect that needs to be publicly aired and corrected."

In suspense

The goodwill agreement is purported to prevent owners from taking legal action against Tesla in the event of defects or repairs. It further requires owners to remain silent about such vehicular shortcomings.

Both conditions are of questionable legality, but Toyota and GM have also required purchasers to sign gag agreements.



Tesla Model S

According to Hagens Berman, the agreement reads, "You agree to keep confidential our provision of the Goodwill, the terms of this agreement and the incidents or claims leading or related to our provision of the Goodwill. In accepting the Goodwill, you hereby release and discharge Tesla and related persons or entities from any and all claims or damages arising out of or in any way connected with any claims or incidents leading or related to our provision of the Goodwill."

Hagens Berman is seeking more information from owners who have signed such agreements with Tesla. The firm is also pursuing damages against Volkswagen Group in light of the emissions scandal uncovered last September ([see story](#)).

The terms are of particular relevance now amid reports that the Model S has a defective suspension that can cause it to fail at low speeds. Some owners have reported that their suspension joints are unusually rusty, but reports allege that Tesla has refused to make repairs even to vehicles under warranty.

"In today's world, companies are chomping at the bit to trick consumers into signing away their rights, with arbitration language buried in the fine print," Mr. Berman said in a statement. "We think Tesla's skirting a very dangerous area, and are seeking more information from vehicle owners who have been forced to sign these so-called goodwill' agreements."



2017 Tesla Model S

The U.S. National Highway Safety Administration is also investigating the nondisclosure agreement. Tesla, for its part, has said it did not intend to prevent owners from reporting safety issues to regulators, but rather to refrain from admitting wrongdoing even as it performed discounted repairs.

Legal matters

Luxury automakers have recently come under fire for a variety of legal issues.

Volkswagen Group also recently became the target of a patent infringement complaint from a hybrid technology developer.

The developer, Paice, filed the complaint alleging that automobiles under the Volkswagen, Audi and Porsche brands are using its technology without a license in April 2016, and the U.S. International Trade Commission has now voted to formally investigate. The suit comes less than a year after it was revealed that Volkswagen-owned brands had been cheating emissions test ([see story](#)).

Moreover, German automaker BMW is fighting allegations of defects in its electric i3 vehicles.

On May 17, MLG Automotive Law filed a national class action lawsuit against BMW North America, LLC alleging that the i3's "Range Extender" feature is defective. Automakers are clamoring to garner a sizable share of the growing electric vehicle market, so the setbacks of the lawsuit could be substantial if these allegations are verified ([see story](#)).

"These are serious issues that allow car companies to cover up serious defects," Mr. Berman said. "We are certainly seeing these in the auto industry with more frequency."