

Master to oversee the distribution of \$975 million in restitution (the “Restitution Funds”) that Takata agreed to pay to designated claimants, including auto manufacturers (the “OEMs”) and individuals with personal injuries.¹ This proposed second distribution addresses only the restitution to individuals under the Individual Restitution Fund (defined below).

Contemporaneously with the acceptance of the Plea Agreement, the Court entered the *Restitution Order* [Dkt. No. 24] (the “Restitution Order”) requiring Takata to, among other things, pay \$125 million in restitution to individuals who suffered (or will suffer) personal injury caused by the malfunction of a Takata airbag inflator, and who have not already resolved their claims against Takata (the “Individual Restitution Fund” or “IRF”).

Pursuant to the Plea Agreement, on July 31, 2017, the Court entered an order appointing Eric D. Green as Special Master of the Takata Restitution Funds (the “Appointment Order”) [Dkt. No. 40] to administer the Individual Restitution Fund (as well as the OEM Restitution Fund). Pursuant to paragraph 2 of the Appointment Order, the Special Master’s responsibilities include, *inter alia*,

¹ The Restitution Order requires, *inter alia*, Takata to pay \$850 million in restitution to the OEMs in connection with their purchase of Takata airbags inflators (the “OEM Restitution Fund”). The Special Master previously submitted the proposed allocation of the OEM Restitution Fund and requested Court approval of the proposed notice program [Dkt. No. 49]. The Court entered the order approving the proposed notice program to distribute notice regarding the OEM Restitution Fund on November 28, 2017 [Dkt. No. 50], and the distribution of the \$850 million in restitution to the OEMs has been completed in accordance with the Court’s orders [Dkt. Nos. 81, 90, 100, 105].

establishing procedures, subject to Court approval, to determine eligible claimants and the amount of loss eligible for compensation, developing a formula or formulas, subject to Court approval, for distributing funds to eligible claimants, making determinations regarding allowed claims, and making a recommendation to the Court regarding allocation of funds from the Individual Restitution Fund.

A. The Revised IRF Methodology.

On March 21, 2018, the Court entered an order approving the Special Master's proposed approach to distributing the funds in the IRF (the "Revised IRF Methodology").² The Revised IRF Methodology sets forth the requirements for qualifying as an Eligible Claimant³ and divides eligible claims into two categories: (i) "Current Claims" filed with the Special Master by August 31, 2018; and (ii) "Future Claims"⁴ filed after August 31, 2018. Under the Revised IRF Methodology, a portion of the IRF is allocated to Current Claims and the balance is

² *Order Granting Special Master's Request for Approval of the Revised Individual Restitution Fund Methodology* [Dkt. No. 77] and *Overruling Defendant's Objection* [Dkt. No. 78] (the "IRF Methodology Order").

³ "Eligible Claimant" means an individual (1) who has suffered personal injury or death caused by the rupture or aggressive deployment of a Takata phase-stabilized ammonium nitrate (PSAN) airbag inflator (the "PSAN Airbag Inflator Malfunction"; (2) who was at the time the PSAN Airbag Inflator Malfunction occurred (a) in a vehicle located or registered in the United States, its territories or its possessions, or (b) a U.S. citizen or permanent resident (wherever the PSAN Airbag Inflator Malfunction occurred); and (3) who has not already resolved his or her claim against Takata Corporation and/or any of its affiliates.

⁴ The Special Master now refers to "Future Claims" as simply "Claims" given that all claims that are processed pursuant to this Request and thereafter were filed after August 31, 2018.

reserved for Future Claims based on estimations of Current and Future Claims conducted by NERA.

Given that the estimated value of all anticipated Current and Future Claims far exceeds the \$125 million in the Individual Restitution Fund, the Special Master decided to utilize a relative valuation approach to determine awards to Eligible Claimants. Under this approach, points are assigned to claims based on injury categories in an injury valuation matrix and certain other factors, and then the points assigned to each claim are converted to a monetary award based on the number and value of allowed claims and the funds available.

Future Claims are valued and paid under the same procedures as Current Claims. In the event that there are fewer Future Claims than estimated, unused funds will be distributed to all eligible claimants on a proportional basis.

B. The Claim Forms and Notice Program.

On May 29, 2018, the Special Master obtained Court approval of the following in connection with the IRF: (i) the Notice Program; (ii) the Personal Injury Claim Form; (iii) the Wrongful Death Claim Form; (iv) the lists of required supporting documentation; (v) the Notice of Claim Form, which enables claimants to timely file but defer consideration of their claim; and (vi) the HIPAA Release.⁵

⁵ *Order Granting Special Master's Request for Approval of Individual Restitution Fund Claim Forms, Notice Program, and Extension of Current Claims Filing Deadline*, dated May 29, 2018 [Dkt. No. 94].

The next day, May 30, 2018, the Special Master launched the targeted Notice Program for the IRF, including direct notification through mail and email, indirect notice through international publication and a press release, and various types of online media. With respect to the direct notification, the Claims Administrator mailed a claim package consisting of a direct notice, claim forms, supporting documentation checklists, and a notice of claim. This targeted notice supplemented the notice program in the U.S. Bankruptcy Proceedings, which was designed to reach approximately 83 million past and present registered owners of a vehicle containing a Takata PSAN Inflator.

C. Second Distribution Request.

On January 17, 2020, the Special Master filed the *Special Master's Request for Approval of Second Distribution of Individual Restitution Fund* [Dkt. No. 120] (the "Second IRF Distribution Request"). In the Second IRF Distribution Request, the Special Master indicated that he evaluated each Claim, determined whether such claims were eligible for compensation from the IRF, and, if eligible, assigned a point value to each claim. In total, after all internal reviews and appeals, 10,990 points were awarded to those Claimants. On March 12, 2020, the Court entered its *Order Granting Special Master's Request for Approval of Second Distribution of Individual Restitution Fund (ECF No. 120)* [Dkt. No. 121] (the "Order").

D. The Evaluation of Claims Subject to Third Distribution Request.

Since entry of the Order, the Special Master has administered, reviewed, analyzed, and evaluated sixty (60) additional Claims. The purpose of this Request is to seek the Court's approval of the Special Master's determinations for this group of Claims.

Epiq reviewed each of the sixty (60) Claims: (i) for facial deficiencies, such as a missing signature, lack of basic documentation, or failure to supply required information; and (ii) for more substantive deficiencies, such as failure to supply evidence of a rupture or aggressive deployment. If deficiencies were identified by Epiq, then deficiency notices were sent out to those claimants, or their attorneys, identifying the deficiencies and requesting supplementation within the cure period set forth in the Revised IRF Methodology.

Once a claim was deemed complete, it was evaluated by staff at Epiq, reviewed by senior management at Epiq according to criteria developed and specified by the Special Master, and then sent to the Special Master for final review and determination.

Ultimately, of the sixty (60) Claims, the Special Master and his team determined that eighteen (18) of the Claims are eligible for compensation and forty-two (42) of the Claims are ineligible for compensation.

With respect to the forty-two (42) ineligible Claims, they were determined to be ineligible for one of the following reasons: (i) twenty-seven (27) of the Claims remain deficient following the expiration of the deadline to cure deficiencies; (ii) five (5) of the Claims allege a non-deployment of the airbag, which is not compensable under the IRF; (iii) for eight (8) of the Claims, a Takata airbag was not installed in the subject vehicle; and (iv) two (2) of the Claims failed to show the rupture was causally related to the claimant's injury.

For each of the eighteen (18) eligible Claims, the Special Master, with the assistance of his advisors, finalized the point awards following both an initial evaluation and additional review sessions to ensure that each eligible Claim was treated fairly and equitably.

i. Notice Of Award Or Denial.

Next, the Special Master sent either award or denial letters to the sixty (60) Claimants, as applicable, notifying them of the Special Master's determination and, if eligible, their proposed point award. Award letters included the number of points that each Claimant had been awarded, as well as the dollar value of a point and the dollar value of their Claim. The denial letters that were sent to ineligible Claimants notified the Claimants of the basis of the Special Master's determination.

ii. Appeal Process.

Upon receipt of the award or denial letter, Claimants were provided the opportunity to appeal the Special Master's determination through the internal appeals process set forth in the Revised IRF Methodology. Claimants could initiate an appeal by filing a Notice of Appeal with the Special Master within thirty (30) days of receipt of the determination letter (the "Appeal Deadline"). Prior to the expiration of the Appeal Deadline, the Special Master received: (i) seventeen (17) Notices of Appeal solely of a determination of ineligibility; and (ii) nine (9) Notices of Appeal solely of the amount of an award.

As directed in the Revised IRF Methodology, independent third-party Review Officers then re-examined the twenty-six (26) claims for which Notices of Appeal were filed and made a recommendation to the Special Master as to each Claim that they reviewed. The independent third-party Review Officers affirmed the Special Master's award for all nine (9) valuation appeals and sixteen (16) of the seventeen (17) ineligibility appeals were affirmed. For one (1) ineligibility appeal, the Review Officer recommended that the Special Master revisit his determination to confirm that all claim submissions were considered.

II. Third Distribution Request.

A. Claims Determinations.

In accordance with the Court-approved Revised IRF Methodology, the Special Master has evaluated each Claim, determined whether it is eligible for compensation from the IRF, and, if eligible, assigned a point value. In total, after all internal reviews and appeals, 17,937 points were awarded for the eighteen (18) eligible Claims. In accordance with the Second Request Order, the value of a point is currently set at \$71.01 for the eighteen (18) eligible Claims.⁶ Accordingly, the Special Master recommends that \$1,273,706.37 be distributed to the Claimants included in this proposed distribution.

Attached hereto as **Exhibit A** is a chart of the eighteen (18) Claims determined to be eligible for compensation, the points awarded to each Claim, and the corresponding monetary value of each point award, based on the proposed dollar value of a point. Attached hereto as **Exhibit B** is a chart reflecting the forty-two (42) Claims determined to be ineligible for compensation, organized by basis for denial. Attached hereto as **Exhibit C** is a chart reflecting each claim that was subject to internal appeal, the basis of such appeal, and the outcome of the appeal.

⁶ The value of a point remains subject to change based on, among other things, estimates of claims, which are driven primarily by OEM recall completion rates and incidents of inflator ruptures, as well as actual investment results. The Special Master is receiving data on a rolling basis and, if the updated information results in a change in the value of a point, the Special Master will seek Court-approval of the revised value.

The names of the claimants in each exhibit are removed in order to protect each Claimant's personal information.

The Special Master recommends that the Court approve the Claimants listed on Exhibit A as Eligible Claimants and the distribution of the monetary awards listed on Exhibit A to these Claimants. The Special Master further recommends that the Court approve the denial of the Claims listed on Exhibit B.

B. Releases.

The Court previously approved conditioning payment from the IRF on the execution and submission of a release to the Special Master. *See* IRF Methodology Order. In addition, the Court ordered that attorney's fees for Claims may not exceed twenty-five percent 25% of an award, except for good cause shown as to why the permissible attorney's fees portion of an award should be upwardly adjusted. *See id.*, at Section VII(I). The Special Master recommends requiring that, as a condition for payment from the IRF to any individual represented by counsel, counsel must execute a rider to the release acknowledging and agreeing to abide by the restriction on attorney's fees set forth in the IRF Methodology Order.

C. Notice And Objections.

Consistent with the procedures set forth in the *Minutes of July 25, 2019 Conference with Special Master* [Dkt. No. 110] (attached hereto as **Exhibit D**), the

Special Master will notify Claimants: (i) of their point award and the monetary value of the award (if any); (ii) of the filing of this Request; and (iii) that they may object to the Request by submitting a written response to the Special Master on or before June 8, 2020. Shortly following the objection deadline, the Special Master will confer with the Court and file with the Court in the miscellaneous case docket a supplemental filing providing further information with (i) a brief background materials as to the claims for which Notices of Appeal were filed, the recommendations of the independent third-party Review Officers with respect to those appeals, and the Special Master's recommendations as to same; and (ii) any objections filed on or before June 8, 2020 as permitted in the Request and the Special Master's recommendation with respect to any such objections. Following that submission and any further meeting or request of the Court, the Special Master will request that the Court enter an order approving this Request.

CONCLUSION

WHEREFORE, the Special Master requests that the Court enter an order substantially in the form attached hereto as **Exhibit E** approving: (a) the distribution to Claimants as set forth on **Exhibit A** hereto; (b) the determination that the claims of the Claimants set forth on **Exhibit B** are ineligible for compensation from the Individual Restitution Fund; and (c) conditioning payment from the IRF to individuals represented by counsel on execution of a rider by

counsel acknowledging and agreeing to abide by the restriction on attorney's fees set forth in the IRF Methodology Order.

Dated: May 18, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. D. Green', written over a horizontal line.

Eric D. Green, Special Master

EXHIBIT A

	Claim No.	Points Awarded	Monetary Award¹
1	142	1,000	\$71,010.00
2	167	1,500	\$106,515.00
3	168	1,000	\$71,010.00
4	169	275	\$19,527.75
5	179	1,600	\$113,616.00
6	180	2,700	\$191,727.00
7	183	100	\$7,101.00
8	10000399	100	\$7,101.00
9	10000545	100	\$7,101.00
10	10000708	350	\$24,853.50
11	10000800	350	\$24,853.50
12	10000817	412	\$29,256.12
13	10000851	100	\$7,101.00
14	10000868	100	\$7,101.00
15	10000875	150	\$10,651.50
16	10000899	6,650	\$472,216.50
17	10000964	850	\$60,358.50
18	10000974	600	\$42,606.00
	Total	17,937	\$1,273,706.37

¹ Calculated at \$71.01 per point.

EXHIBIT B

	Claim No.	Ineligibility Reason
1	175	Non-Deployment
2	10000700	Non-Deployment
3	10000739	Non-Deployment
4	10000841	Non-Deployment
5	10000896	Non-Deployment
6	172	Ineligible Takata PSAN Inflator
7	10000298	Ineligible Takata PSAN Inflator
8	10000343	Ineligible Takata PSAN Inflator
9	10000346	Ineligible Takata PSAN Inflator
10	10000886	Ineligible Takata PSAN Inflator
11	10000924	Ineligible Takata PSAN Inflator
12	10000933	Ineligible Takata PSAN Inflator
13	10001012	Ineligible Takata PSAN Inflator
14	10000709	Failure to Prove Causation
15	10000972	Failure to Prove Causation
16	103	Failure to Cure; Insufficient Proof of Rupture
17	109	Failure to Cure; Insufficient Proof of Rupture
18	119	Failure to Cure; Insufficient Proof of Rupture
19	164	Failure to Cure; Insufficient Proof of Rupture
20	174	Failure to Cure; Insufficient Proof of Rupture
21	10000152	Failure to Cure; Insufficient Proof of Rupture
22	10000189	Failure to Cure; Insufficient Proof of Rupture
23	10000334	Failure to Cure; Insufficient Proof of Rupture
24	10000500	Failure to Cure; Insufficient Proof of Rupture
25	10000537	Failure to Cure; Insufficient Proof of Rupture
26	10000538	Failure to Cure; Insufficient Proof of Rupture
27	10000578	Failure to Cure; Insufficient Proof of Rupture
28	10000585	Failure to Cure; Insufficient Proof of Rupture

	Claim No.	Ineligibility Reason
29	10000586	Failure to Cure; Insufficient Proof of Rupture
30	10000611	Failure to Cure; Insufficient Proof of Rupture
31	10000620	Failure to Cure; Insufficient Proof of Rupture
32	10000714	Failure to Cure; Insufficient Proof of Rupture
33	10000757	Failure to Cure; Insufficient Proof of Rupture
34	10000778	Failure to Cure; Insufficient Proof of Rupture
35	10000810	Failure to Cure; Insufficient Proof of Rupture
36	10000848	Failure to Cure; Insufficient Proof of Rupture
37	10000850	Failure to Cure; Insufficient Proof of Rupture
38	10000857	Failure to Cure; Insufficient Proof of Rupture
39	10000893	Failure to Cure; Insufficient Proof of Rupture
40	10000922	Failure to Cure; Insufficient Proof of Rupture
41	10000869	Failure to Cure; Insufficient Proof of Rupture
42	10000931	Failure to Cure; Insufficient Proof of Rupture

EXHIBIT C

IRF Pending Claims

Eligibility Notice of Appeal – Ineligible Takata PSAN Inflator

Based on the available information presented to the Special Master, the subject vehicles did not have PSAN inflators installed.

Affirmed Appeals

No.	Claim ID	Reviewer	Recommendation
1	10000298	Kelly	Affirm
2	10000886	Gertner	Affirm

IRF Pending Claims

Eligibility Notice of Appeal – Insufficient Proof of Aggressive Deployment

The Claimant did not offer evidence meeting aggressive deployment compensability criteria. Specifically, the Claimant did not offer evidence of a delayed-deployment of a dual-stage inflator nor evidence of over-pressurization.

Affirmed Appeals

No.	Claim ID	Reviewer	Recommendation
1	119	Gertner	Affirm

IRF Pending Claims

Eligibility Notice of Appeal – Insufficient Proof of Rupture

The Special Master did not identify sufficient evidence in the Claim File to show rupture (e.g., ejection of metal fragments or shrapnel).

Affirmed Appeals

No.	Claim No.	Reviewer	Recommendation
1	103	Rhodes	Affirm
2	109	Rhodes	Affirm
3	174	Rosen	Affirm
4	10000189	Rhodes	Affirm
5	10000500	Rosen	Affirm
6	10000611	Rhodes	Affirm
7	10000620	Gertner	Affirm
8	10000714	Gertner	Affirm
9	10000778	Yanni	Affirm
10	10000922	Rhodes	Affirm
11	10000869	Yanni	Affirm

IRF Pending Claims

Eligibility Notice of Appeal – Insufficient Proof of Rupture

The Special Master did not identify sufficient evidence in the Claim File to show rupture (e.g., ejection of metal fragments or shrapnel

No.	Claim ID	Reviewer	Recommendation	Reason for Recommendation	Special Master Decision	Special Master Reasoning
12	10000152	Rhodes	Revisit	Reviewer notes that the Claimant's attorney states additional documentation may have been submitted and would like the claim to be revisited.	Accept Recommendation	The Special Master reviewed all documentation submitted by the Claimant and did not identify sufficient evidence in the Claim File to show rupture (e.g., ejection of metal fragments or shrapnel). Specifically, Claimant's injury (2nd degree burn to the arm) is not consistent with the type of injury normally sustained in a rupture (lacerations, removal of metal fragments).

IRF Pending Claims
Eligibility Notice of Appeal – Insufficient Proof of Causation

The Special Master/Trustee determined that the rupture of the driver-side airbag inflator was not a contributing cause of the Claimant's injuries.

Affirmed Appeals

No.	Claim No.	Reviewer	Recommendation
1	10000709	Yanni	Affirm
2	10000972	Gertner	Affirm

IRF Pending Claims**Notice of Appeals - Valuations****Affirmed Appeals**

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation
1	168	1,000	Yanni	Affirm
2	169	275	Kelly	Affirm
3	180	2,700	Kelly	Affirm
4	183	100	Rosen	Affirm
5	10000545	100	Yanni	Affirm
6	10000708	350	Gertner	Affirm
7	10000800	350	Rhodes	Affirm
8	10000817	412	Yanni	Affirm
9	10000974	600	Kelly	Affirm

EXHIBIT D

1. In early August, 2019, the Special Master intends to file a motion with the Court seeking approval of all Current Claim dispositions, the dollar value of a point, and the form of release¹ to be executed by the claimant and submitted to the Special Master in order for the claimant to receive his or her allocated distribution (the “Motion”). The Motion will include a list of the awards to be given by claim number and claimant name; provided, however, that the claimant name shall be redacted to preserve confidentiality.

2. After filing the Motion, the Special Master will notify Current Claimants of their point award and the monetary value of the award (if any), which is subject to court-approval. Current Claimants also will be notified that they may object to the Motion by submitting a written response to the Special Master on or before August 30, 2019.

3. Shortly following the objection deadline, the Special Master will confer with Judge Steeh to review the Current Claim dispositions and any submitted objections.

4. Following that meeting, the Special Master will request that the Court enter an order approving the Motion as initially submitted or

¹ The Court previously approved conditioning payment on submitting a release and the content of the release as part of the IRF Methodology.

amended by the Special Master. Following approval by the Court, the Special Master shall commence the distribution process to eligible Claimants.

Dated: July 29, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on July 29, 2019, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk

EXHIBIT E

3. The Court [APPROVES] the Special Master's determination that the claims of the Claimants set forth in Exhibit B are ineligible for compensation from the Individual Restitution Fund.

4. The Court [APPROVES] conditioning payment from the IRF to individuals represented by counsel on execution of a rider by counsel acknowledging and agreeing to abide by the restriction on attorney's fees set forth in the IRF Methodology Order.

5. The Court [DIRECTS] that Distributions shall be made in accordance with the procedures set forth in the Revised IRF Methodology.

6. This Court retains jurisdiction over all matters covered by, or related to, this Order.

So ordered.

Dated: _____, 2020

GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE