

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,	)	
Plaintiff	)	Case No. 16-CR-20810-04
	)	
v.	)	Honorable George Caram Steeh
	)	
TAKATA CORPORATION,	)	
Defendant.	)	

**SPECIAL MASTER’S SUPPLEMENTAL  
REQUEST FOR APPROVAL OF SECOND DISTRIBUTION OF  
INDIVIDUAL RESTITUTION FUND AND DENIAL OF CLAIMS**

Eric D. Green, as Special Master of the Takata Restitution Funds, respectfully submits this supplemental request (the “Supplemental Request”), in connection with the *Special Master’s Request for Approval of Second Distribution of Individual Restitution Fund* (the “Second IRF Distribution Request”) (Dkt. No. 120), seeking approval from this Court for: (i) a second distribution from the Individual Restitution Fund (the “IRF”) to compensate eighteen (18) additional eligible Claims; and (ii) the denial of forty-four (44) additional ineligible Claims.

On January 17, 2020, the Special Master filed the Second IRF Distribution Request. As described in the Second IRF Distribution Request, the Special Master evaluated each Claim referenced therein, determined whether it is eligible for compensation, and, if eligible, assigned a point value. In total, after all internal reviews and appeals, 10,990 points were awarded to the eighteen (18) eligible

Claims, amounting to \$780,399.90 to be distributed under this proposed distribution. See **Exhibit A**. In addition, as identified in the Second IRF Distribution Request, the Special Master determined forty-four (44) Claims to be ineligible for compensation, organized by basis for denial as listed under and attached hereto as **Exhibit B**. Consistent with the procedures set forth in the *Minutes of July 25, 2019 Conference with Special Master* (the “July 2019 Minutes Order”) [Dkt. No. 110], the Special Master notified affected Claimants: (i) of their point award and the monetary value of the award (if any); (ii) of the filing of the Second IRF Distribution Request; and (iii) that they may object to the Second IRF Distribution Request by submitting a written response to the Special Master on or before February 14, 2020 (the “Objection Deadline”).

In accordance with the July 2019 Minutes Order, the Special Master submits this supplemental filing providing further information with a summary of: (i) the Notices of Appeal that were filed; (ii) the recommendations of the third-party Review Officers with respect to those appeals, if applicable; (iii) the Special Master’s recommendations as to the same; and (iv) any objections filed on or before February 14, 2020 and the Special Master’s recommendation with respect to any such objections.

A proposed order affirming the Special Master's recommendations with respect to the Second IRF Distribution Request and the objections submitted thereto is attached hereto as **Exhibit E**.

**I. Background Information on Appeals.**

As described in the Second IRF Distribution Request, there were ten (10) Claims for which Notices of Appeal were filed. Eight (8) Notices of Appeal challenged the Special Master's initial determination that the claimants were ineligible to receive a distribution out of the IRF, and two (2) Notices of Appeal challenged the Special Master's determination of the amount of points granted on account of the award. Attached hereto is an exhibit containing information on the Notices of Appeal and the Special Master's recommendations. *See* **Exhibit C**.

Claims that the Special Master determined to be ineligible for compensation can be separated into four categories based on the reason that the Special Master determined the claim not to be compensable. The categories and the Special Master's reasoning in support of each determination are detailed below:

- a. **Ineligible Takata PSAN Inflator**: In reviewing these claims, the Special Master reviewed, among other available information, the claimants' claim file, product information and data provided by Takata entities and their current and former representatives, the applicable original equipment manufacturer (the "**OEM**"), and publicly accessible database administered

by generated by the National Highway Transportation and Safety Authority (“NHTSA”) that identifies vehicles subject to recall because a PSAN inflator was installed in the vehicle. The Special Master determined that, based on the available information presented to him, the subject vehicles did not have PSAN inflators installed, making the claimants in this group ineligible for compensation. Four (4) of these claimants appealed the Special Master’s determination. Upon review, in accordance with the Revised Individual Restitution Fund Methodology (the “Revised IRF Methodology”),<sup>1</sup> the third-party review officers affirmed the Special Master’s determination for all four (4) appeals. The information supporting these determinations is attached as **Exhibit C: IRF Pending Claims – Ineligible Takata PSAN Inflator.**

b. Insufficient Proof of Rupture: To demonstrate proof of rupture, a claimant must present evidence that the deployment of a Takata PSAN inflator in a vehicle manufactured or distributed by an OEM was a contributing cause to the claimed injury or injuries. After a review of the submitted claim materials, the Special Master determined that certain claimants failed to provide evidence and proof of a rupture sufficient to support a claim and eligibility for distribution from the IRF. In accordance with the Revised IRF Methodology, the Special Master issued deficiency

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<sup>1</sup> See *Revised Proposed Individual Restitution Fund Methodology*, Dkt. No. 77-1 (Case No. 16-CR-20810-04).

notices to each claimant for which he determined the claimant had failed to provide evidence and proof of rupture sufficient to support a claim and eligibility for distribution from the IRF. Claimants had sixty (60) days to cure all deficiencies in their claim following receipt of a deficiency notice. However, following the expiration of the applicable cure period for each claimant, the Special Master determined that each claimant in this category had not cured the deficiencies in their claim and had ultimately provided insufficient proof of rupture and thus was not an eligible Claimant. One (1) of these claimants appealed the Special Master's determination. Upon review, the third-party review officer affirmed the Special Master's determination. Additional information on this determination is contained in **Exhibit C**: IRF Pending Claims – Insufficient Proof of Rupture.

c. Insufficient Proof of Aggressive Deployment: In most cases, a claimant must demonstrate proof of the following to qualify for compensation when presenting a claim of aggressive deployment: (i) a delayed deployment of a Takata PSAN dual-stage inflator; (ii) over-pressurization of the inflator; and (iii) the claimant's injuries were caused by interaction with the airbag as it was deploying; and the injuries were enhanced such that they were greater than the typical injuries an occupant in the applicable crash would receive from an interaction with an airbag as it

deploys normally. Based on these criteria, the Special Master determined that certain claimants failed to provide evidence and proof of an aggressive deployment sufficient to support a claim and eligibility for distribution out of the IRF. In accordance with the Revised IRF Methodology, the Special Master issued deficiency notices to each claimant for which he determined the claimant had failed to provide evidence and proof of aggressive deployment sufficient to support a claim and eligibility for distribution from the IRF.<sup>2</sup> Claimants had sixty (60) days to cure all deficiencies in their claim following receipt of a deficiency notice. Three (3) of these claimants appealed the Special Master's determination. Upon review, and in accordance with the Revised IRF Methodology, the third-party review officers affirmed the Special Master's determination for two (2) of the three (3) appeals. In one (1) appeal, the third-party review officer recommended that the Special Master's initial determination be reversed. The Special Master accepted this one (1) reversal recommendation, and the claim is currently under review for a point valuation. Further information supporting these determinations is contained in **Exhibit C**: IRF Pending Claims – Insufficient Proof of Aggressive Deployment.

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<sup>2</sup> In many circumstances the Special Master's professionals conducted other additional informal outreach to claimants with deficient claims in order to assist in curing deficiencies.

As noted above, the remaining two (2) Notices of Appeal challenged the number of points granted by the Special Master to claimants determined to be eligible to receive a distribution from the IRF. Upon review, and in accordance with the Revised IRF Methodology, the third-party review officers affirmed the Special Master's determination for both appeals. Further information supporting these determinations is contained in **Exhibit C**: IRF Pending Claims – Valuations.

## **II. Objections and Recommendations.**

After filing the Second IRF Distribution Request, the Special Master notified each Claimant subject to the Second IRF Distribution Request that they may object to the request by submitting a written response to the Special Master on or before February 14, 2020. The substance of the objections and the Special Master's recommendations as to these objections is attached hereto as **Exhibit D**.

## **CONCLUSION**

**WHEREFORE**, the Special Master requests that the Court enter the revised proposed form of order substantially in the form attached hereto as **Exhibit E**.

Dated: February 28, 2020

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by 'D. Green' and a long horizontal flourish extending to the right.

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Eric D. Green, Special Master



**EXHIBIT A**

	<b>Claim No.</b>	<b>Points Awarded</b>	<b>Monetary Award<sup>1</sup></b>
1	93	1,500	\$ 106,515.00
2	143	150	\$ 10,651.50
3	145	410	\$ 29,114.10
4	10000103	1,000	\$ 71,010.00
5	10000151	500	\$ 35,505.00
6	10000395	1,875	\$ 133,143.75
7	10000397	2,500	\$ 177,525.00
8	10000523	150	\$ 10,651.50
9	10000555	275	\$ 19,527.75
10	10000622	350	\$ 24,853.50
11	10000624	100	\$ 7,101.00
12	10000638	100	\$ 7,101.00
13	10000680	350	\$ 24,853.50
14	10000753	20	\$ 1,420.20
15	10000760	10	\$ 710.10
16	10000821	1,000	\$ 71,010.00
17	10000830	350	\$ 24,853.50
18	10000867	350	\$ 24,853.50
	<b>Total</b>	<b>10,990</b>	<b>\$ 780,399.90</b>

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<sup>1</sup> Calculated at \$71.01 per point.

**EXHIBIT B**

	<b>Claim No.</b>	<b>Ineligibility Reason</b>
1	118	Non-Deployment
2	157	Non-Deployment
3	10000042	Non-Deployment
4	10000581	Non-Deployment
5	10000655	Non-Deployment
6	10000735	Non-Deployment
7	10000797	Non-Deployment
8	10000119	Ineligible Takata PSAN Inflator
9	10000184	Ineligible Takata PSAN Inflator
10	10000205	Ineligible Takata PSAN Inflator
11	10000599	Ineligible Takata PSAN Inflator
12	10000616	Ineligible Takata PSAN Inflator
13	10000630	Ineligible Takata PSAN Inflator
14	10000636	Ineligible Takata PSAN Inflator
15	10000677	Ineligible Takata PSAN Inflator
16	10000688	Ineligible Takata PSAN Inflator
17	10000746	Ineligible Takata PSAN Inflator
18	10000752	Ineligible Takata PSAN Inflator
19	10000775	Ineligible Takata PSAN Inflator
20	10000777	Ineligible Takata PSAN Inflator
21	10000783	Ineligible Takata PSAN Inflator
22	10000795	Ineligible Takata PSAN Inflator
23	10000838	Ineligible Takata PSAN Inflator
24	10000805	Ineligible Takata PSAN Inflator; Non-Deployment
25	10000549	Failure to Cure; Insufficient Proof of Rupture or Aggressive Deployment
26	10000589	Failure to Cure; Insufficient Proof of Rupture or Aggressive Deployment
27	105	Failure to Cure; Insufficient Proof of Aggressive Deployment
28	10000594	Failure to Cure; Insufficient Proof of Aggressive Deployment
29	102	Failure to Cure; Insufficient Proof of Rupture
30	116	Failure to Cure; Insufficient Proof of Rupture
31	122	Failure to Cure; Insufficient Proof of Rupture
32	124	Failure to Cure; Insufficient Proof of Rupture
33	132	Failure to Cure; Insufficient Proof of Rupture
34	133	Failure to Cure; Insufficient Proof of Rupture
35	10000134	Failure to Cure; Insufficient Proof of Rupture
36	10000198	Failure to Cure; Insufficient Proof of Rupture
37	10000250	Failure to Cure; Insufficient Proof of Rupture
38	10000459	Failure to Cure; Insufficient Proof of Rupture
39	10000608	Failure to Cure; Insufficient Proof of Rupture

	<b>Claim No.</b>	<b>Ineligibility Reason</b>
40	10000629	Failure to Cure; Insufficient Proof of Rupture
41	10000747	Failure to Cure; Insufficient Proof of Rupture
42	10000751	Failure to Cure; Insufficient Proof of Rupture
43	10000766	Failure to Cure; Insufficient Proof of Rupture
44	10000823	Failure to Cure; Insufficient Proof of Rupture

**EXHIBIT C**

## IRF Pending Claims

### Notice of Appeals - Valuations

#### Affirmed Appeals

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation
1	93	1,500	Kelly	Affirm
2	10000395	1,000	Yanni	Affirm

## 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	10000752	Kelly	Affirm
2	10000838	Rosen	Affirm
3	10000616	Yanni	Affirm
4	10000119	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**

<b>No.</b>	<b>Claim ID</b>	<b>Reviewer</b>	<b>Recommendation</b>
1	105	Rosen	Affirm
2	10000594	Kelly	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.

**Recommendation to Reverse**

No.	Claim ID	Reviewer	Recommendation	Reason for Reversal Recommendation	Special Master Decision	Special Master Reasoning
3	10000399	Rosen	Reverse	Reviewer requested the Special Master re-review documentation and injury photographs that may support Aggressive Deployment.	Accept Recommendation	After considering the Review Officer's recommendation, together with photographic evidence submitted by the Claimant, the Special Master has determined that the Claimant suffered enhanced injuries resulting from a Takata airbag that aggressively deployed. The Special Master will notify the Claimant of her point award. The Claimant will have an opportunity to appeal the Special Master's point valuation in accordance with the IRF Methodology.

**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**

<b>No.</b>	<b>Claim ID</b>	<b>Reviewer</b>	<b>Recommendation</b>
1	10000747	Kelly	Affirm

**EXHIBIT D**

## IRF Pending Claims

### Eligibility Objections – Ineligible Takata PSAN Inflator

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

No.	Claim ID	Name	Appealed IRF Claim	Reviewer Decision	Argument Raised in Objection	Special Master's Recommendation to the Court
1	10000599	DAVID ALLEN GRANO	N		"I sustained a neck injury as a result of an accident in which the Takata airbag deployed. My accident was documented and I have submitted medical and rehabilitation documentation."	Recommendation: Overrule Objection. After reviewing OEM and Takata data, as well as recall information from NHSTA, the Special Master determined that no Takata phase stabilized ammonium nitrate inflator was installed in the vehicle associated with this claim
2	10000616	ALAN D. WATSON	Y	Affirmed	"Claimant states that he was injured when the airbag exploded following a MVC"	Recommendation: Overrule Objection. After reviewing OEM and Takata data, as well as recall information from NHSTA, the Special Master determined that no Takata phase stabilized ammonium nitrate inflator was installed in the vehicle associated with this claim
3	10000752	GARY LEE SMITH	Y	Affirmed	"It is irrefutable that I was injured by the Takara Airbag on the date of 09/22/2009. The necessary documentation and verification, was sent, with respect to the Takata Airbag Individual Restitution Fund and Tort Compensation Trust Fund."	Recommendation: Overrule Objection. After reviewing OEM and Takata data, as well as recall information from NHSTA, the Special Master determined that no Takata phase stabilized ammonium nitrate inflator was installed in the vehicle associated with this claim

## IRF Pending Claims

### Eligibility Objections – 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.

The objection listed in the table below involves a claim that was reviewed by an IRF Review Officer following a timely appeal. The IRF Review Officer recommended an **affirmance** of the Special Master’s proposed decision.

No.	Claim ID	Name	Appealed IRF Claim	Reviewer Decision	Basis for Objection	Argument Raised in Objection	Special Master's Recommendation to the Court
1	105	LOUISE MARIE PORAC	Y	Affirmed	Claimant believes the evidence submitted shows that the injuries were caused by a malfunctioning Takata airbag.	"Claimant was no aware that she had a Takata airbag at the time of her accident. She did not becomes aware of this until November 2017 when she was notified by the bankruptcy court of her possible takata injury claims...Claimant avers that her injuries themselves show aggressive deployment...Claimant contends that the Special Master has imposed more rigorous standards on future claimants than those imposed on those individuals whose claims were known to Takata at the time of the settlement was made and the restitution funds were established."	Recommendation: Overrule Objection. 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.

## IRF Pending Claims

### Eligibility Objections – 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).

The objection listed in the table below does not involve a claim that was timely appealed. Therefore, this claim has not been reviewed by an IRF Review Officer.

No.	Claim ID	Name	Basis for Objection	Argument Raised in Objection	Special Master's Recommendation to the Court
1	10000766	CHARMAINE THERESA CHA-CAMP	Claimant is objecting to the entire request of approving denials.	"I object to the Request for final court approval of denials of current claims. Thanks."	Recommendation: Overrule Objection. The Claimant did not allege that the inflator actually ruptured in the claim file. In addition, the Special Master did not identify any evidence in the claim file supporting a rupture.

The objection listed in the table below involves a claim that was reviewed by an IRF Review Officer following a timely appeal. The IRF Review Officer recommended an **affirmance** of the Special Master's proposed decision.

No.	Claim ID	Name	Appealed IRF Claim	Reviewer Decision	Basis for Objection	Argument Raised in Objection	Special Master's Recommendation to the Court
2	10000747	AYANA LATRICE HOWARD	Y	Affirmed	Claimant argues that the information provided was sufficient to support a rupture claim.	"I was in car accident the airbag deployed the pictures in email along with my car"... "I'm denied which i feel is definitely wrong and I feel there's discrimination because Robert Warren was supposed to check eligibility for compensation (whether your claim was denied by special master/trustee) instead he marks denial of individual for poems claims"	Recommendation: Overrule Objection. The Special Master did not find sufficient evidence in the claim file to support a rupture claim. In addition, an independent Review Officer reached the same conclusion following the Claimant's timely appeal.

## IRF Pending Claims

### Eligibility Objections – Non-Deployment

Claims arising from the non-deployment of an airbag are not eligible for compensation from the IRF.

The objection listed in the table below does not involve a claim that was timely appealed. Therefore, the claim has not been reviewed by an IRF Review Officer.

No.	Claim ID	Name	Appealed IRF Claim	Argument Raised in Objection	Special Master's Recommendation to the Court
1	10000042	DAVID RANDY PETE	N	"The Special Master only used one portion of his 30 pages claim form, when the question was asked (did the airbag deploy during impact) no consideration was given to any of my numerous document submitted before application was made available. I feel very concern that if Judge Steeh allow my denial to be upheld it will set a bad precedent for any and all other claims being decided."	Recommendation: Overrule Objection. Non-deployment of an airbag is not a basis for recovery under the IRF methodology.





Claimant is represented by counsel, counsel for the Claimant must execute and submit to the Special Master a rider to the release as described in paragraph 4 herein.

2. All objections submitted in connection with this Request are [OVERRULED].

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

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GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE