

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

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

**FOURTH STATUS REPORT OF THE SPECIAL MASTER**

1. Eric D. Green, the court-appointed Special Master for the custody, administration and distribution of the Takata Airbag Restitution Funds, hereby respectfully submits his Fourth Status Report pursuant to paragraph 4 of this Court’s Appointment Order.<sup>1</sup> The Status Report provides an overview of the Special Master’s work from January 30, 2018 through March 30, 2018 (the “Reporting Period”) and anticipated future efforts.

**I. ACTIVITIES IN THE REPORTING PERIOD.**

**A. FINALIZING A FORMULA FOR ALLOCATING THE \$850 MILLION OEM RESTITUTION FUND AND DEVELOPING PAYMENT PROCEDURES.**

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Third Status Report of the Special Master*, dated Jan. 29, 2018 [Doc. 59].

2. In the prior reporting period, the Special Master reported that he provided notice of the Proposed Allocation to all OEMs eligible to receive restitution under the Plea Agreement and Restitution Order, as well as to two alleged whistleblowers represented by Constantine Cannon LLP (the “Constantine Cannon Represented Alleged Whistleblowers”) and an alleged whistleblower represented by Clayton, McKay & Bailey, PC (the “CMB Represented Alleged Whistleblower,” and together with the Constantine Cannon Represented Alleged Whistleblowers, the “Alleged Whistleblowers”). The only objections to the Proposed Allocation received by the Special Master were two letter objections sent to the Special Master from the Alleged Whistleblowers.

3. As further reported in the prior reporting period, in the objections, the Alleged Whistleblowers asserted that they are eligible for an award under the Motor Vehicle Safety Whistleblower Act and, therefore, that thirty percent of the OEM Restitution Fund must remain available to them as a source of recovery in the event that an award is granted by the Secretary of Transportation. The objections were provided to the Consenting OEMs, who submitted a response to the Special Master on January 17, 2018. Thereafter, the Alleged Whistleblowers submitted a reply to the OEM response to the Special Master on January 24, 2018.

4. On January 31, 2018, the Special Master submitted the *Special Master’s Request for Final Approval of Allocation and Distribution of OEM*

*Restitution Fund*, docketed on Feb. 1, 2018 [Doc. 60]. In that request, the Special Master recommended that the Court approve the Proposed Allocation and overrule the Alleged Whistleblowers' objections.

5. On February 2, 2018, the Court directed the Special Master to file the Alleged Whistleblowers' objections and the OEM response on the docket. *See Order Requesting Responsive Pleading* [Doc. 61]. The Special Master filed these materials under seal on February 5, 2018 [Docs. 62-67], and provided unsealed copies to Takata and the Government.

6. In the *Order Requesting Responsive Pleading* [Doc. 61], the Court also directed the Government to file a response to the Alleged Whistleblowers' objections by March 2, 2018, and permitted reply briefing from the Alleged Whistleblowers by March 16, 2018, which was later extended by the Court to March 23, 2018. On March 2, 2018, the Government filed its response. *See Government's Response to Alleged Whistleblower's Objections*, dated Mar. 2, 2018 [Doc. 76].

7. Thereafter, certain parties entered into an agreement with the Alleged Whistleblowers and the latter withdrew their objections. *See Notice of Withdrawal of Objections to the Special Master's Proposed Allocation and Distribution of OEM Restitution Fund, United States v. Takata*, Case No. 17-mc-51546 (E.D. Mich. Mar. 23, 2018), Doc. 7. Accordingly, there are no outstanding objections to the Special Master's Proposed Allocation.

8. Under the Restitution Order, Takata is required to pay the \$850 million in restitution within five days after the closing of the sale of substantially all of Takata's assets (the "Transaction"), which must occur within 365 days after the entry of the plea in this case. *See* Restitution Order ¶ 2. On February 23, 2018, Takata and the United States entered into a stipulation extending the deadline for the closing of the sale to April 13, 2018. *See Stipulation to Extend Deadline for Closing Sale Transaction*, docketed on Feb. 26, 2018 [Doc. 75].

9. During the Reporting Period, the Special Master has been working with the Consenting OEMs, Takata, and the purchaser in the Transaction, at their request, to develop procedures for facilitating the payment by Takata of the \$850 million in restitution and the payment of distributions to the Consenting OEMs in accordance with the Proposed Allocation. Restitution monies which have been allocated to the Non-Consenting OEMs will be received by the Special Master and distributed by him to the Non-Consenting OEMs. The Special Master intends to seek Court approval of payment procedures in the near term, permitting the planned payment and distribution of the OEM Restitution Fund in the next 30 days.

**B. OBTAINING COURT APPROVAL OF A FORMULA FOR ALLOCATING THE \$125 MILLION INDIVIDUAL RESTITUTION FUND.**

10. In prior reporting periods, the Special Master reported on his submission of a proposed methodology for allocating the \$125 million Individual

Restitution Fund, which included limiting claimants to (i) U.S. citizens or permanent residents; or (ii) individuals who suffered personal injury or death in a vehicle registered in the United States, its territories, or its possessions. *See Special Master's Request for Approval of the Individual Restitution Fund Methodology*, docketed on Jan. 2, 2018 [Doc. 54]. The Special Master received one objection to the proposal by Takata, challenging the exclusion of foreign nationals injured outside the United States and in cars not registered in the United States from the definition of "Eligible Claimants." *See Defendant's Objection to Special Master's Proposed Individual Restitution Fund Methodology*, dated Jan. 11, 2018 [Doc. 56].

11. Pursuant to Court orders, the Government filed a response to Takata's objection on February 1, 2018, Takata filed a reply in support of its objection on February 12, 2018, and a hearing before the Court was held on March 5, 2018.<sup>2</sup>

12. Thereafter, on March 15, 2018, the Special Master filed a revised version of the Individual Restitution Fund Methodology. *See Special Master's Request for Approval of the Revised Individual Restitution Fund Methodology*, docketed on Mar. 19, 2018 [Doc. 77]. The revisions reflected an effort to harmonize the Individual Restitution Fund with the Takata Airbag Tort Compensation Trust

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<sup>2</sup> *See Order Requiring Responsive Pleading*, dated Jan. 19, 2018 [Doc. 57]; *Response to Defendant's Objection to Special Master's Proposed Individual Restitution Fund Methodology*, dated Feb. 1, 2018 [Doc. 58]; *Reply in Support of Takata's Objection to the Special Master's Proposed Individual Restitution Fund Methodology*, dated Feb. 12, 2018 [Doc. 69]; *Notice to Appear*, dated Feb. 13, 2018 [Doc. 70]

Fund (the “TATCTF”) to be established in the U.S. Bankruptcy Proceedings (described *infra* Section I.C). Those revisions included: (i) expanding the definition of “Eligible Claimants” to include individuals who suffered a personal injury or death at the time that the vehicle was located in the U.S.; (ii) providing claimants the option to file a “Notice of Claim” prior to submitting a full claim form; (iii) expanding the time in which claims may be filed before they are deemed waived; and (iv) revising the definition of “Current Claims.”

13. On March 21, 2018, the Court approved the Revised Individual Restitution Fund Methodology, overruled Takata’s objection, and accepted the Special Master’s recommendation to limit the amount of attorneys’ fees related to the submission of claims to the Individual Restitution Fund. *See Order Granting Special Master’s Request for Approval of the Revised Individual Restitution Fund Methodology (Doc. 77) and Overruling Defendant’s Objection (Doc. 56)*, dated Mar. 21, 2018 [Doc. 78].<sup>3</sup>

14. The Special Master intends to finalize the claim forms and launch the notice program for the Individual Restitution Fund by the end of May, 2018, assuming there is no delay to the Effective Date of the bankruptcy plan and closing of the Transaction. The launch date for the Individual Restitution Fund was delayed

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<sup>3</sup> Attorneys’ fees for Current Claims may not exceed one-third of an award and attorneys’ fees for Future Claims may not exceed 25 percent of an award, except for good cause shown.

to enable the creation of a streamlined procedure for submitting claims and obtaining distributions from both the Individual Restitution Fund and the TATCTF established in connection with the U.S. Bankruptcy Proceedings of Takata's U.S. affiliate, TK Holdings Inc., and other Takata affiliates, which is described below.<sup>4</sup>

**C. CREATION OF THE TATCFT  
IN THE U.S. BANKRUPTCY PROCEEDINGS.**

15. In the U.S. Bankruptcy Proceedings, a plan of reorganization was confirmed on February 21, 2018.<sup>5</sup> Pursuant to the plan, the TATCTF was created to administer, resolve, and liquidate claims relating to personal injury or wrongful death: (i) caused by the malfunction of a PSAN Inflator sold or supplied (a) prior to the Petition Date (the "PSAN PI/WD Claims"); or (b) between the Petition Date and the Closing Date (the "Administrative Expense PSAN PI/WD Claims"); or (ii) caused by a Takata product, other than by the malfunction of a Takata PSAN Inflator, sold or supplied (a) prior to the Petition Date ("Other PI/WD Claims"); or (b) between the Petition Date and the Closing Date ("Administrative Expense PI/WD Claims").<sup>6</sup>

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<sup>4</sup> See *infra* Section II for a discussion of the launch of the Individual Restitution Fund notice program.

<sup>5</sup> See Findings of Fact, Conclusions of Law, and Order Confirming Fifth Amended Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors, *In re TK Holdings Inc.*, Case No. 17-11375 (Bankr. D. Del. Feb. 21, 2018), Doc. 2120.

<sup>6</sup> These defined terms have the meanings ascribed to them in the Fifth Amended Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors, *In re TK Holdings Inc.*, Case No. 17-11375 (Bankr. D. Del. Feb. 20, 2018), Doc. 2116 (the "Plan"). Under the Plan, the

16. Pursuant to a permanent injunction provision in the plan, all PSAN PI/WD Claims against TK Holdings Inc., its affiliated debtors, and any Consenting OEM that elects to become a “Participating OEM” and contribute funds to the TATCTF are channeled to the TATCTF.<sup>7</sup>

17. The Special Master has been asked and agreed to serve as the Trustee of the TATCTF and administer the Individual Restitution Fund in coordination with the administration of the TATCTF. Costs and expenses incurred in connection with the TATCTF are separately accounted for and are not charged to Takata pursuant to the Plea Agreement and the Restitution and Appointment Orders.

18. The final Trust Agreement for the TATCTF and procedures for resolution of PSAN PI/WD Claims channeled to the TATCTF were filed in the U.S. Bankruptcy Proceedings on March 26, 2018. Pursuant to these procedures, the same kind of point system approved by the Court for allocating the Individual Restitution Fund will be used to allocate funds in the TATCTF for claimants with PSAN PI/WD Claims (if a PSAN PI/WD Claim involves a Participating OEM, certain other procedures will be used to establish the Participating OEM’s contribution to that claim). A single claim form and streamlined process for the submission of claims

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TATCTF was also created to administer, resolve, and liquidate claims relating to personal injury or wrongful death caused by the malfunction of a PSAN Inflator sold or supplied on or after the Effective Date; however, there is no anticipated liability for such claims. *See id.* § 5.10(m).

<sup>7</sup> To date, Honda/Acura is the only Participating OEM.



will be created for claimants seeking compensation from the TATCTF and the Individual Restitution Fund.

**D. ENGAGEMENT OF PROFESSIONALS.**

19. In the Reporting Period, the Special Master obtained Court approval for the retention of: (i) Blank Rome LLP as Delaware local counsel in connection with the U.S. Bankruptcy Proceedings; and (ii) Lien Resolution Group as a lien resolution agent to assist with developing and implementing a medical lien resolution strategy in connection with the Individual Restitution Fund. *See Order Authorizing the Special Master's Retention of Professionals*, dated Feb. 8, 2018 [Doc. 68].

20. In addition, the Special Master has retained, subject to Court approval, Verdolino & Lowey, P.C. to provide tax services to the Takata Restitution Fund Trust, which was established to hold the Individual Restitution Fund and the OEM Restitution Fund.

**II. GOING FORWARD EFFORTS.**

21. Over the next 60 days, with the assistance of his claims administrator Garden City Group, the Special Master will finalize proposed claim forms, lists of required supporting documentation, and an online portal where claimants and their representatives can file claims with the Individual Restitution Fund and the TATCTF, upload supporting documentation, and monitor claim status. The Special

Master also plans to launch a combined notice program for the Individual Restitution Fund and the TATCTF.

22. Further, the Special Master intends to finalize a proposal for payment procedures for distributions from the OEM Restitution Fund, seek court approval of those procedures, and, upon court approval and closing of the Transaction, begin paying distributions to OEMs.

**CONCLUSION**

23. The Special Master will continue to perform his responsibilities and duties consistent with the Appointment Order and all other directives of this Court.

Dated: March 29, 2018

Respectfully submitted,

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

Eric D. Green, Special Master