

provides, *inter alia*, for the appointment of a Special 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 nineteenth 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* [Docket 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”) [Docket No. 40] to administer the Individual Restitution Fund (as well as the OEM Restitution Fund). Pursuant to paragraph 2 of the

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 [Docket No. 49]. The Court entered the order approving the proposed notice program to distribute notice regarding the OEM Restitution Fund on November 28, 2017 [Docket No. 50], and the distribution of the \$850 million in restitution to the OEMs has been completed in accordance with the Court’s orders [Docket Nos. 81, 90, 100, 105].

Appointment Order, the Special Master’s responsibilities include, *inter alia*, 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

² *Order Granting Special Master’s Request for Approval of the Revised Individual Restitution Fund Methodology* [Docket No. 77] and *Overruling Defendant’s Objection* [Docket 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.

Methodology, a portion of the IRF is allocated to Current Claims and the balance is 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. If there are fewer Future Claims than estimated, unused funds will be distributed to all eligible claimants on a proportional basis.

On February 4, 2021, the Special Master moved the Court to modify the Revised IRF Methodology and the points schedule incorporated therein [Docket No. 138] (the “Points Modification Motion”) to more equitably compensate personal injury victims. On February 26, 2021, the Court entered an order approving the Points Modification Motion [Docket No. 140].

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

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. Subsequently, the Special Master has received, evaluated, processed, and paid claims pursuant to the IRF Methodology upon receiving Court approval in response to periodic distribution requests.

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 [Docket No. 94].

C. Eighteenth Distribution Request.

On December 6, 2022, the Special Master filed the *Special Master's Request for Approval of Eighteenth Distribution of Individual Restitution Fund* [Docket No. 175] (the "Eighteenth IRF Distribution Request"). In the Eighteenth 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, 10,465 points were awarded to those Claimants. On January 17, 2023, the Court entered its *Order Granting Special Master's Request for Approval of Eighteenth Distribution of Individual Restitution Fund* (the "Eighteenth Request Order") [Docket No. 177].

D. The Evaluation of Claims Subject to the Nineteenth Distribution Request.

Since entry of the Eighteenth Request Order, the Special Master has administered, reviewed, analyzed, and evaluated eleven (11) additional Claims. The purpose of this Request is to seek the Court's approval of the Special Master's determinations for these Claims.

Epiq, under the Special Master's supervision, reviewed each of the eleven (11) 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 these eleven (11) Claims, the Special Master and his team determined that five (5) of the Claims are eligible for compensation and six (6) of the Claims are ineligible for compensation.

With respect to the six (6) ineligible Claims: (i) three (3) of the Claims failed to provide sufficient evidence of aggressive deployment; and (ii) three (3) of the Claims failed to provide sufficient evidence of rupture.

For each of the five (5) eligible Claims, the Special Master, with the assistance of his advisors, finalized the point awards following multiple layers of evaluation to ensure 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 eleven (11) 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) one (1) Notice of Appeal regarding a determination of ineligibility, and (ii) three (3) Notices of Appeal regarding valuation.

As directed in the Revised IRF Methodology, randomly assigned Review Officers then re-examined the four (4) claims for which a Notice of Appeal was filed and made a recommendation to the Special Master with respect to each reviewed claim. The Review Officers affirmed the Special Master's award for the three (3) valuation appeals.

For the one (1) ineligibility appeal, the Review Officer recommended additional review. The Special Master had initially denied this claim, finding that

the claimant failed to provide sufficient proof of rupture. The Review Officer's recommendation for additional review was based on evidence provided by the Claimant that the Review Officer determined was indicative of a potential rupture event, including: (i) airbag cushion photos with large, unusual holes, (ii) a neurologist's report allegedly claiming that the claimant's traumatic brain injuries were caused by interaction with the deployed airbag cushion, and (iii) affidavits submitted by the claimant's father and the claimant's attorney.

This was an unusual claim for several reasons. First, the claim is internally inconsistent and confusing in that the attorney's affidavit in support of the claim appears to, at times, be claiming inflator rupture, and, at other times, claiming aggressive deployment, or that both defects occurred simultaneously, which would be unprecedented. Notwithstanding the inconsistency in the claimant's alleged injury mechanism theories, the Special Master looked at each injury mechanism separately and together so as not to prejudice the claimant for how the claim submission was presented.

In light of the Review Officer's recommendation, the Special Master and his team conducted a comprehensive and detailed second review of the claim file. As part of this additional review, the Special Master re-evaluated the evidence provided by the Claimant, including the photos, neurology report, and the affidavits submitted from the claimant's father and the claimant's attorney.

With respect to the claimant's allegation of a ruptured airbag, the claim file contained an affidavit by the claimant's father that stated that, after the collision, the father ripped open and tore through the airbag to remove the airbag and make the car operable again. The photographs of the airbag cushion provided by the claimant in the claim file depict the airbag cushion after the father ripped open and removed the airbag cushion. There are no photographs of the airbag cushion from before the unit was ripped apart and removed. Because these actions by the claimant's father so thoroughly damaged the airbag cushion, they destroyed whatever evidentiary value it might have had. Thus, the Special Master cannot rely on the photograph of the spoliated airbag for any proof of rupture.

The claim file contains no other physical or photographic evidence that would suggest a ruptured airbag. There is no evidence of burning or charring. There is no evidence of shrapnel or pieces of metal ejected from the airbag. There are no photographs of the inflator itself. Lacking such physical evidence of a rupture, the Special Master considered whether the claimant's injuries—specifically, a traumatic brain injury—were of the type that would be consistent with and sufficient to prove an airbag rupture. Photographs in the claim file show a sizable crack to the vehicle's windshield, suggesting that the windshield sustained a significant impact. The claimant's own statements at the time of the collision indicate that he believes his head may have struck the windshield. Based on the claimant's own

contemporaneous statements, it appears that collision with the windshield is a far more likely cause of the claimant's traumatic brain injury than the rupture of the airbag inflator. Thus, while, the claimant's claimed injury of traumatic brain injury theoretically could be "consistent" with a rupture event, the lack of any physical or photographic evidence of an actual rupture having occurred, combined with plausible evidence of an alternative potential mechanism of that injury informed the Special Master's denial determination.

The neurologist's report also does not support a finding that a rupture event occurred or that the claimant's traumatic brain injury was caused by interaction with the vehicle's airbag. While the Review Officer's recommendation stated that the neurologist's report concluded that the claimant's injury was or could be caused by interaction with the airbag cushion, the neurology report does not contain such a finding or conclusion. Rather, the neurologist's report states the following: "His father related that Mr. [redacted] was involved in a motor vehicle accident one week prior and had struck his head on the windshield" and "[t]he leading causes of non-fatal TBI are falls, motor-vehicle traffic incidents, and strikes or blows to the head from or against an object." Medical documentation submitted with the neurology report also state that "[r]egarding his MVA he was driving about 20s MPH without a seatbelt and hit the windshield when he crashed." The only time the neurology report mentions airbags is to state in the interview section of the report that "Airbags

deployed in the MVA and Mr. [redacted] self-extricated but felt ‘hazy’ and confused.” Having re-reviewed the neurology report and the underlying medical records submitted therewith, the Special Master does not reach the same conclusion as the Review Officer that the neurology report indicated that claimant’s traumatic brain injuries were caused by interaction with the deployed airbag cushion.

Regarding the aggressive deployment claim, the Special Master determined the claim is ineligible for compensation based on a failure to demonstrate the required elements of an aggressive deployment. As the Court is aware, aggressive deployment claims must prove three elements: (i) the delayed deployment of a dual-stage Takata PSAN airbag inflator, (ii) over-pressurization of the inflator, and (iii) enhanced injury caused by the aggressive deployment of the airbag. The claimant provided no evidence supporting the technical requirements under the first two-prongs of the test. To the extent the claimant implicitly argued the enhanced injury prong, as discussed above and below, the claimant’s traumatic brain injury is more consistent with an impact with the vehicle’s windshield. The Special Master concluded that the claimant failed to prove any of these elements.

To summarize, after a careful re-review of the claim file, the Special Master found that there was insufficient evidence of either a rupture or aggressive deployment event having occurred. The claimant’s injuries appear more consistent with the collision of the claimant’s head with the vehicle’s windshield—an

explanation supported by the available photographic evidence, the claimant's statements, and the medical record. As a result, the Special Master reaffirmed his initial determination and submits that this claim should be deemed ineligible. The Special Master's recommendation with respect to each appeal is contained in **Exhibit C**.

II. Nineteenth Distribution Request.

A. Claims Determinations.

In accordance with the 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, 3,125 points were awarded for the five (5) eligible Claims. In accordance with the proposed Nineteenth Request Order, the value of a point is currently set at \$191 for the five (5) eligible Claims filed in 2022. Accordingly, the Special Master recommends that \$596,875.00 be distributed to the Claimants included in this proposed distribution.

Attached hereto as **Exhibit A** is a chart of the five (5) 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 six (6) Claims determined to be ineligible for compensation, organized by basis for denial.

Attached hereto as **Exhibit C** is a chart reflecting the claims that were subject to internal appeal and the corresponding dispositions. The names of the claimants in each exhibit are removed 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* [Docket 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 March 1, 2023 (the “Objection Deadline”). 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) 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 the Objection Deadline 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: February 6, 2023

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	Point Value	Monetary Award
1	263	900	\$191.00	\$171,900.00
2	268	500	\$191.00	\$95,500.00
3	269	1,125	\$191.00	\$214,875.00
4	10001313	100	\$191.00	\$19,100.00
5	10001528	500	\$191.00	\$95,500.00
	Total Points	3,125	Total Award	\$596,875.00

EXHIBIT B

	Claim No.	Ineligibility Reason
1	336	Insufficient Proof of Aggressive Deployment
2	10001206	Insufficient Proof of Aggressive Deployment
3	10001342	Insufficient Proof of Aggressive Deployment
4	10001143	Insufficient Proof of Rupture
5	10001379	Insufficient Proof of Rupture
6	10001454	Insufficient Proof of Rupture

EXHIBIT C

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).

Recommendation to Reconsider

No.	Claim ID	Reviewer	Recommendation	Reason for Recommendation	Special Master Decision	Special Master Reasoning
1	10001143	Rosen	Reconsideration	Reviewer requested reconsideration based on the airbag photos, neurology report, and attorney's affidavit.	Affirm Ineligibility	Per the recommendation of the Reviewer, the Special Master re-evaluated the evidence provided by the Claimant and found insufficient evidence to support a rupture or injury caused by rupture.

IRF Pending Claims
Notice of Appeals - Valuations

Affirmed Appeals

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation
1	263	900	Gertner	Affirm
2	268	500	Gertner	Affirm
3	269	1,125	Rosen	Affirm

EXHIBIT D

**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.)	
_____)	

MINUTES OF JULY 25, 2019 CONFERENCE WITH SPECIAL MASTER

On July 25, 2019, Special Master Eric D. Green conferred with the Court to discuss the substantial progress made in evaluating Current Claims. The Special Master reported that he and his team of professionals have nearly completed the Current Claims evaluation process, including the initial evaluation of each Current Claim, provision of notice of initial determinations and the opportunity to appeal, the re-examination of claims on appeal by the Review Officers, and the Special Master’s consideration of the recommendations of the Review Officers, all in accordance with the revised IRF Methodology approved by the Court on March 21, 2018 (Doc. 78). The Court and the Special Master then discussed the process for obtaining court approval of Current Claim dispositions and the final dollar value of a point. After conferring with the Special Master, the Court considered and approved the following procedure and timeline:

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: _____, 2023

GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE