

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 eleventh 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*, establishing

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].

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.

On February 4, 2021, the Special Master moved the Court to modify the Revised IRF Methodology and the points schedule incorporated therein [Dkt. 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 [Dkt. 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.

C. Tenth Distribution Request.

Recently, on July 27, 2021, the Special Master filed the *Special Master's Request for Approval of Tenth Distribution of Individual Restitution Fund* [Dkt. No. 150] (the "Tenth IRF Distribution Request"). In the Tenth IRF Distribution Request,

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 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, 7,290 points were awarded to those Claimants. On September 17, 2021, the Court entered its *Order Granting Special Master's Request for Approval of Tenth Distribution of Individual Restitution Fund* (the "Tenth Request Order") [Dkt. No. 152].

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

Since entry of the Tenth Request Order, the Special Master has administered, reviewed, analyzed, and evaluated fifteen (15) 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 fifteen (15) 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 fifteen (15) Claims, the Special Master and his team determined that five (5) of the Claims are eligible for compensation and ten (10) of the Claims are ineligible for compensation.

The ten (10) ineligible Claims were determined to be ineligible for one of the following reasons: (i) for four (4) of the Claims, a Takata airbag was not installed in the subject vehicle; (ii) three (3) of the Claims failed to provide sufficient evidence of rupture or aggressive deployment; and (iii) for three (3) of the Claims, the injury was caused by non-deployment of the airbag, which is not a Takata defect.

For each of the five (5) 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 disposition notifications to the fifteen (15) Claimants, notifying each 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. Denial letters provided 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 three (3) Notices of Appeal: (i) two (2) Notices of Appeal regarding a determination of ineligibility; and (ii) one (1) Notice of Appeal solely on the amount of an award.

As directed in the Revised IRF Methodology, independent Review Officers then re-examined the three (3) claims for which a Notice of Appeal was filed and made a recommendation to the Special Master as to that Claim that they reviewed. For the sole valuation appeal, the Review Officer recommended an increase of the Claimant's point award. As described further in Exhibit C, the Special Master accepted the Review Officer's recommendation on the valuation appeal and will seek the Court's approval for a modified point award up to the maximum number of points allowable for the injuries alleged. For the two (2) ineligibility appeals, the

Review Officer affirmed the Special Master's determination. The Special Master's recommendation to the Court with respect to each appeal is contained in Exhibit C.

II. Eleventh 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, 12,575 points were awarded for the five (5) eligible Claims. In accordance with the proposed Eleventh Request Order, the value of a point is currently set at \$178 for the one (1) eligible Claim filed prior to 2021, and \$182 for the four (4) eligible Claims filed in 2021.⁶ Accordingly, the Special Master recommends that \$2,284,650.00 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 ten (10)

⁶ The 2021 Re-Estimation Report incorporates an inflation adjustment of 2% to the Point Value for Claims filed and approved in 2021. Accordingly, the Point Value for Claims filed and approved in 2021 is \$182, which (after rounding up) is approximately 2% greater than the \$178 Point Value adopted in the 2021 Re-Estimation Report and approved by the Court.

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 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 October 18, 2021 (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) 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 October 18, 2021 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: September 23, 2021

Respectfully submitted,

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

Eric D. Green, Special Master

EXHIBIT A

	Claim No.	Points Awarded	Point Value	Monetary Award
1	261	1,500	\$182.00	\$273,000.00
2	273	1,500	\$182.00	\$273,000.00
3	256	7,575	\$182.00	\$1,378,650.00
4	10001137	1,000	\$178.00	\$178,000.00
5	10001195	1,000	\$182.00	\$182,000.00
	Total Points	12,575	Total Award	\$2,284,650.00

EXHIBIT B

	Claim No.	Ineligibility Reason
1	10001243	Ineligible Takata PSAN Inflator
2	10001128	Ineligible Takata PSAN Inflator
3	10001228	Ineligible Takata PSAN Inflator
4	10001251	Ineligible Takata PSAN Inflator
5	10000383	Insufficient proof of rupture or aggressive deployment
6	189	Insufficient proof of aggressive deployment
7	10000859	Insufficient proof of aggressive deployment
8	10000064	Non-Deployment
9	10001221	Non-Deployment
10	10001224	Non-Deployment

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 in the airbags claimed to have caused injury.

Affirmed Appeals

No.	Claim ID	Reviewer	Recommendation
1	10001243	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 No.	Reviewer	Recommendation
1	10000859	Gertner	Affirm

IRF Pending Claims

Notice of Appeals - Valuations

Recommendations to Reverse

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation	Reason for Reversal Recommendation	Special Master Decision	Special Master Reasoning
1	261	1,250	Gertner	Increase award to 1,500 points	Reviewer would increase to the maximum allowable under extraordinary review for pain and suffering experienced by the claimant, including the temporary blindness and hearing loss as well as ongoing fear of getting into another vehicle, which affects her sleep.	Accept Recommendation	After considering the Review Officer's recommendation, the Special Master has determined that a 250 point increase is warranted for the reasons set forth by the Review Officer. Subject to Court approval, the Claimant's point award shall be increased by 250 points, resulting in a modified point award of 1,500 points, which is the maximum number of allowable points for this injury.

EXHIBIT D

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: _____, 2021

GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE