

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 seventh 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.

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. 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. Sixth Distribution Request.

Recently, on November 16, 2020, the Special Master filed the *Special Master's Request for Approval of Sixth Distribution of Individual Restitution Fund* [Dkt. No. 133] (the "Sixth IRF Distribution Request"). In the Sixth 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, 8,987 points were awarded to those Claimants. On December 14, 2020, the Court

entered its *Order Granting Special Master's Request for Approval of Sixth Distribution of Individual Restitution Fund* [Dkt. No. 135].

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

Since entry of the Order, the Special Master has administered, reviewed, analyzed, and evaluated nine (9) additional Claims. The purpose of this Request is to seek the Court's approval of the Special Master's determinations for these Claims.

Epiq reviewed each of the nine (9) 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 nine (9) Claims, the Special Master and his team determined that two (2) of the Claims are eligible for compensation and seven (7) of the Claims are ineligible for compensation.

With respect to the seven (7) ineligible Claims, they were determined to be ineligible for one of the following reasons: (i) for two (2) of the Claims, a Takata airbag was not installed in the subject vehicle; (ii) two (2) of the Claims failed to provide sufficient evidence of rupture; (iii) for two (2) of the Claims, it was determined that the injury was caused by a non-Takata airbag even though an eligible airbag was installed in the subject vehicle; and (iv) for one (1) of the Claims, the injury was caused by non-deployment of the airbag.

For each of the two (2) 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 nine (9) 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) three (3) Notice of Appeal regarding a determination of ineligibility; (ii) and two (2) Notices of Appeal solely on the amount of an award.

As directed in the Revised IRF Methodology, independent third-party Review Officers then re-examined the five (5) claims for which a Notice of Appeal was filed and made a recommendation to the Special Master as to that Claim that they reviewed. The independent third-party Review Officers affirmed the Special Master's award for two (2) ineligibility appeals and one (1) of the valuation appeals. One (1) ineligibility appeal was recommended for further review, and one (1) valuation appeal was recommended for additional points. The Special Master carefully reviewed and considered each of these Review Officer's recommendations and determined to affirm the original award. Further review of the claim originally

determined to be ineligible confirmed that the side panel airbag that deployed and was claimed to have caused the injuries was not an eligible Takata airbag. Further review of the original point award for the eligible claim confirmed that the claim had been fairly evaluated consistent with the IRF methodology and comparable claims and that the Claimant had been fully compensated for all of his injuries by way of his POEM Claim to the TATCTF. Accordingly, any additional IRF points awarded would not result in any increase in compensation to the Claimant because under the terms of the TATCTF, if the Claimant is fully (100%) compensated by an OEM through the Claimant's POEM Claim, both the basic Trust and IRF awards are assigned to the POEM as an offset. Finally, the number of points recommended by the Review Officer for this claim exceeds the absolute limit permitted under the IRF methodology. The Special Master's recommendation to the Court with respect to each appeal is contained in Exhibit C.

II. Seventh 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, 850 points were awarded for the two (2) eligible Claims. In accordance with the Seventh Request Order, the value of a point is

currently set at \$71.01 for the two (2) eligible Claims. Accordingly, the Special Master recommends that \$60,358.50 be distributed to the Claimants included in this proposed distribution.

Attached hereto as **Exhibit A** is a chart of the two (2) 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 seven (7) 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 February 8, 2021. 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 February 8, 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: January 18, 2021

Respectfully submitted,


Eric D. Green, Special Master

EXHIBIT A

	Claim No.	Points Awarded	Monetary Award¹
1	216	350	\$24,853.50
2	237	500	\$35,505.00
	Total	850	\$60,358.50

¹ Calculated at \$71.01 per point.

EXHIBIT B

	Claim No.	Ineligibility Reason
1	10001079	Non-Deployment
2	214	Non-Deployment and Ineligible Takata PSAN Inflator
3	10000039	Non-Takata PSAN Inflator Airbag Caused Injury
4	10001094	Ineligible Takata PSAN Inflator
5	10001082	Ineligible Takata PSAN Inflator
6	10000601	Failure to Cure; Insufficient Proof of Rupture
7	10001036	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 in the airbags claimed to have caused injury.

Affirmed Appeals

No.	Claim ID	Reviewer	Recommendation
1	10000039	Gertner	Affirm
2	10001094	Yanni	Affirm

IRF Pending Claims
Eligibility Notice of Appeal – Non-Deployment

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

Recommendation to Reverse

No.	Claim ID	Reviewer	Recommendation	Reason for Reversal Recommendation	Special Master Decision	Special Master Reasoning
1	10001079	Kelly	Reverse	Reviewer states there was evidence the ineligible side-curtain airbag did cause injury to the claimant.	Deny Recommendation	The Special Master/Trustee determined that the eligible driver-side airbag did not deploy. The side-curtain airbag did not contain an eligible Takata PSAN inflator.

IRF Pending Claims

Notice of Appeals - Valuations

Affirmed Appeals

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation
1	237	350	Rosen	Affirm

IRF Pending Claims

Notice of Appeals - Valuations

Recommendation for Additional Points

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation	Reason for Recommendation	Special Master Decision	Special Master Reasoning
1	216	500	Gertner	Additional Points	Reviewer would increase award to 1,000 points because of claimant's age and existence of multiple injuries not separately compensated.	Deny Recommendation	After considering the Review Officer's recommendation, the Special Master has determined that the valuation properly follows the IRF Methodology in that there is no stacking or adjustments available in this case. Further the claimant was fully compensated for all of his injuries by way of his POEM Claim to the TATCTF. Accordingly, any additional IRF points awarded would not result in any increase in compensation to the Claimant because under the terms of the TATCTF, if the Claimant is fully (100%) compensated by an OEM through the Claimant's POEM Claim, both the basic Trust and IRF awards are assigned to the POEM as an offset. Finally, the number of points recommended by the Review Officer for this claim exceed the absolute limit permitted under the IRF methodology

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: _____, 2021

GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE