

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

UNITED STATES OF AMERICA,
Plaintiff

v.

TAKATA CORPORATION,
Defendant.

)
)
) Case No. 16-CR-20810-04
)
) Honorable George Caram Steeh
)
)
)

SECOND 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 Second Status Report pursuant to paragraph 4 of this Court’s Appointment Order.¹ The Status Report provides an overview of the Special Master’s work from September 30, 2017 through November 28, 2017 (the “Reporting Period”), anticipated future efforts, and any other matters which the Special Master believes warrant reporting.

I. ACTIVITIES IN THE REPORTING PERIOD.

A. EXTENSION OF INITIAL 90-DAY DEADLINE.

2. Pursuant to the Appointment Order, the Special Master is to develop and implement proposed procedures for, among other things: (i) establishing a trust

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *First Status Report of the Special Master*, dated Oct. 3, 2017 [ECF No. 45].

to hold the funds paid into the Restitution Funds; (ii) establishing procedures to determine eligible claimants and the amount of compensation for an eligible loss from the Restitution Funds; (iii) developing a formula or formulas for distributing funds to eligible claimants; (iv) reviewing claims on the Restitution Funds; (v) recommending to the Court distributions from the Restitution Funds; and (vi) establishing procedures for distributions.

3. In light of various delays and timing issues described in the First Status Report, on October 27, 2017, the Court, upon the Special Master's request, entered an order granting an extension to December 29, 2017 for the Special Master to complete these tasks. *See Order Approving the Extension of the Initial 90-Day Deadline for Proposing Procedures for Carrying Out the Duties of the Special Master*, dated Oct. 27, 2017 [ECF No. 48].

**B. DEVELOPING A METHODOLOGY
AND FORMULA FOR ALLOCATING
THE \$850 MILLION OEM RESTITUTION FUND.**

4. The Special Master has been working with a group of approximately fifteen OEMs representing a significant majority of Takata's OEM customers (the "Consenting OEMs") to develop and review a methodology, a formula, and procedures to allocate the \$850 million OEM Restitution Fund. At an October 18, 2017 meeting, the Consenting OEMs provided the Special Master with a proposed formula for allocation of the OEM Restitution Fund (the "Proposed Allocation")

for his consideration. Following a formal presentation on the Proposed Allocation, several discussions with the Consenting OEMs about the proposal, and an independent review by the Special Master of the proposal, the Special Master determined that the Proposed Allocation provides for an equitable distribution of the OEM Restitution Fund.

5. Thereafter, the Special Master developed a notice plan providing: (i) direct and publication notice of the Proposed Allocation to all OEMs that purchased PSAN Inflators from Takata or its subsidiaries; and (ii) an opportunity for all OEMs to object or comment on the Proposed Allocation before the Special Master presents the formula to the Court for final approval. On November 22, 2017, the Special Master requested Court approval of the forms of and methods for direct and publication notice. On November 28, 2017, the Court entered an order approving the notice plan. See *Order Granting Special Master's Request for Approval of Proposed Notice Program for Proposed OEM Allocation Protocol*, dated Nov. 28, 2017 [ECF No. 50].

6. Having obtained Court approval, the Special Master will immediately implement the notice plan, which contains a December 20, 2017, 5:00 p.m. EST deadline for OEMs to provide the Special Master with any written comments upon or objections to the Proposed Allocation. The Special Master will carefully review any objections or comments to the Proposed Allocation and plans to submit for

Court approval a final allocation plan for the OEM Restitution Fund in January 2018.

C. FUNDING THE TAKATA CORPORATION RESTITUTION FUND TRUST.

7. On October 19, 2017, the Takata Corporation Restitution Fund Trust received the \$125 million for the Individual Restitution Fund. Wilmington Trust, N.A., as Trustee, with the input of the Special Master, began investing the funds shortly thereafter pursuant to the terms of the Court-approved Trust Agreement.

D. DEVELOPING A METHODOLOGY AND FORMULA FOR ALLOCATING THE \$125 MILLION INDIVIDUAL RESTITUTION FUND.

8. The Special Master has continued to receive and analyze historical settlement data from myriad sources to inform the development of a methodology and formula for allocating the Individual Restitution Fund.

9. The Special Master has requested and received settlement data from Takata, certain of the Consenting OEMs, and participating plaintiffs' lawyers, organized the data into a database, and worked to reconcile inconsistencies in the data. The Special Master is working with his economist, NERA Economic Consulting ("NERA"), to perform various analyses and modeling to identify the factors that have historically driven settlement valuation in individual airbag rupture and aggressive deployment cases and to understand any anomalies in the data.

10. In addition, the Special Master has attended numerous meetings with counsel for Takata and TKH (Takata's United States affiliate in Chapter 11 proceedings in the United States), certain of the Consenting OEMs, and participating plaintiffs' lawyers who are experienced with settling claims arising from personal injuries caused by the malfunction of PSAN Inflators, and he has engaged in in-depth discussions of the factors that have historically driven settlements.

11. The Special Master also held separate meetings with the Consenting OEMs, Takata and TKH, and participating plaintiffs' lawyers to preview and obtain input on the Special Master's initial views on a methodology and formula for allocating the Individual Restitution Fund. The Special Master is carefully considering the information and perspectives from all of these meetings in formulating his methodology and formulas for allocating the \$125 million Individual Restitution Fund.

E. ESTIMATING FUTURE CLAIMS.

12. The Special Master has also met with the Future Claims Representative in the U.S. Bankruptcy Proceedings, participating plaintiffs' lawyers, and the Consenting OEMs to discuss the process of estimating future claims. The Special Master facilitated meetings between his economist and the economists retained by TKH, the Consenting OEMs, and the Future Claims

Representative for the same purpose in order to share information and approaches among the various experts with the goal of obtaining the best consensus estimate of the number and value of future claims. As part of this process, the Special Master's economist has been testing the complex claims model created by the economist for TKH, and making adjustments as necessary in the opinion of the Special Master and his economist.

13. After considerable effort, including obtaining and serving a subpoena from this Court, the Special Master finally obtained data on vehicles in operation from IHS Markit/Polk. This information is crucial to the estimation of future claims. In early November, the Special Master obtained updated data on recall completion rates from certain OEMs. With this information, the Special Master and his economist, NERA, have been working to forecast future personal injury claims. The Special Master will create a reserve for such future claims in the Individual Restitution Fund.

14. In November, the Special Master organized a meeting with, among others, the Special Master's economist, TKH's economist, the Consenting OEMs' economist, the economist of the Future Claims Representative in the U.S. Bankruptcy Proceedings, and counsel for plaintiffs, certain Consenting OEMs, Takata, and TKH. At this meeting, the experts openly shared their work to date and engaged in a frank and principled discussion of the various issues related to

estimating future claims with the objective of identifying areas of agreement and disagreement.

15. Based on all of this information, the Special Master hopes to be able to complete his estimation of future claims and proposed allocation model, methodology, and formulas for the \$125 million Individual Restitution Fund by the end of the year.

F. DEVELOPING A CLAIM ADMINISTRATION PROTOCOL.

16. The Special Master, with the assistance of his claims administrator, Garden City Group (“GCG”), is in the process of developing a claims administration protocol for the Individual Restitution Fund and creating tools for the submission and processing of claims, such as a claims form. To that end, in November, the Special Master and GCG developed a preliminary mock-up of an online portal where claimants and their representatives can file claims, upload supporting documentation, and monitor claim status.

G. COMMUNICATIONS WITH POTENTIAL CLAIMANTS.

17. In the prior reporting period, the Special Master set up a website, email address, and call center to communicate with potential claimants.² As of November 8, 2017, there have been 27,609 visits to the Special Master’s website, 848 emails sent to the Special Master’s email address, and 792 calls to the Special

² The Special Master’s website may be found at www.takataspecialmaster.com.

Master's call center. The Special Master has established procedures to handle and where appropriate respond to all inquiries to the Special Master about the restitution funds.

18. On October 4, 2017, the Bankruptcy Court approved bar date notices in TKH's U.S. bankruptcy proceedings that include a notification about the appointment of the Special Master and the Special Master's website. It is anticipated that this notice will reach approximately 83 million individuals who own, or may have owned, vehicles equipped with PSAN Inflators.

19. In addition, the Special Master is working with his claims administrator, GCG, to refine and finalize a more targeted notice plan designed to reach current and future claimants to the Individual Restitution Fund as soon as the Individual Restitution Fund claims process is launched, including a focused direct notice and media proposal for the first year of the Individual Restitution Fund.

II. GOING FORWARD EFFORTS.

20. Over the next 30 days, the Special Master and his team plan to: (i) continue to develop the claims resolution protocol and allocation methodology for the Individual Restitution Fund to recommend to the Court; (ii) work to establish a fully functional claims facility; (iii) begin testing proposed procedures, and (iv) set up an (a) internal review/appeals process and (b) a pro bono legal assistance process so these components are operational as soon as the Individual Restitution

Fund claims process is launched. Also, as part of this process, the Special Master intends to retain, with Court approval, a medical liens specialist to assist with developing and implementing a lien resolution strategy.

21. The Special Master anticipates submitting to the Court for approval a final formula for allocating the \$850 million OEM Restitution Fund in January 2018 and a proposed allocation plan, claim administration protocol, and notice program for the \$125 million Individual Restitution Fund in December 2017.

CONCLUSION

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

Dated: November 28, 2017

Respectfully submitted,

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

Eric D. Green, Special Master