

**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.)	

**SPECIAL MASTER’S REQUEST FOR APPROVAL
OF TENTH DISTRIBUTION OF INDIVIDUAL RESTITUTION FUND**

Eric D. Green, as Special Master of the Takata Restitution Funds, respectfully submits this request (the “Request”) for this Court’s approval of the tenth distribution from the Individual Restitution Fund (defined below) and respectfully represents as follows:

BACKGROUND

I. Creation Of The Takata Restitution Funds And Appointment Of The Special Master.

On February 27, 2017, the United States Department of Justice and Takata Corporation (“Takata”) filed the *Rule 11 Plea Agreement* [Dkt. No. 23] (the “Plea Agreement”) to resolve criminal charges brought by the government against Takata in connection with Takata’s design, manufacturing, testing, sale and distribution of automobile airbag inflators. The Plea Agreement, which was accepted by this Court, 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 tenth 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. Ninth Distribution Request.

Recently, on May 21, 2021, the Special Master filed the *Special Master's Request for Approval of Ninth Distribution of Individual Restitution Fund* [Dkt. No. 147] (the "Ninth IRF Distribution Request"). In the Ninth 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, 5,350 points were awarded to those Claimants. On July 21, 2021, the Court entered its *Order Granting Special Master's Request for Approval of Ninth Distribution of Individual Restitution Fund* (the "Ninth Request Order") [Dkt. No. 149].

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

Since entry of the Ninth Request Order, the Special Master has administered, reviewed, analyzed, and evaluated nineteen (19) 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 nineteen (19) 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 nineteen (19) Claims, the Special Master and his team determined that seven (7) of the Claims are eligible for compensation and twelve (12) of the Claims are ineligible for compensation.

With respect to the twelve (12) ineligible Claims, they were determined to be ineligible for one of the following reasons: (i) for six (6) of the Claims, a Takata airbag was not installed in the subject vehicle; (ii) five (5) of the Claims failed to provide sufficient evidence of aggressive deployment; and (iii) for one (1) of the Claims, the injury was caused by non-deployment of the airbag.

For each of the seven (7) 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 nineteen (19) 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) five (5) Notices 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 seven (7) 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 Review Officers affirmed the Special Master's award for the two (2) of the valuation appeals. The independent Review Officers also affirmed the Special Master's determination for the five (5) ineligibility appeals. The Special Master's recommendation to the Court with respect to each appeal is contained in **Exhibit C**.

II. Tenth 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, 7,290 points were awarded for the seven (7) eligible Claims. In accordance with the proposed Tenth Request Order, the value of a point is currently set at \$178 for three (3) eligible Claims filed prior to 2021, and \$182 for four (4) eligible Claims filed in 2021.⁶ Accordingly, the Special Master recommends that \$1,320,920.00 be distributed to the Claimants included in this proposed distribution.

Attached hereto as Exhibit A is a chart of the seven (7) 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 twelve (12) 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

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.

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 August 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 August 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: July 27, 2021

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	10001138	215	\$178.00	\$38,270.00
2	10001173	100	\$182.00	\$18,200.00
3	10001156	2250	\$182.00	\$409,500.00
4	10001170	100	\$182.00	\$18,200.00
5	212	350	\$178.00	\$62,300.00
6	253	3375	\$182.00	\$614,250.00
7	10000696	900	\$178.00	\$160,200.00
	Total	7290		\$1,320,920.00

EXHIBIT B

	Claim No.	Ineligibility Reason
1	10000742	Non-Deployment
2	152	Insufficient proof of aggressive deployment
3	10000736	Insufficient proof of aggressive deployment
4	10000908	Insufficient proof of aggressive deployment
5	10001032	Insufficient proof of aggressive deployment
6	10001151	Insufficient proof of aggressive deployment
7	254	Ineligible Takata PSAN Inflator
8	10000895	Ineligible Takata PSAN Inflator
9	10001150	Ineligible Takata PSAN Inflator
10	10001149	Ineligible Takata PSAN Inflator
11	10001086	Ineligible Takata PSAN Inflator
12	10001201	Ineligible Takata PSAN Inflator

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	254	Yanni	Affirm
2	10000895	Rosen	Affirm
3	10001150	Gertner	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.

Affirmed Appeal

No.	Claim ID	Reviewer	Recommendation	Review Note	Special Master Response
1	10000742	Rosen	Affirm	Review Officer requested that the Special Master provide a more detailed explanation to the Claimant as to why non-deployment claims are not eligible for compensation from the IRF.	Following the Review Officer's decision, the Special Master issued a Supplemental Notice of Denial to the Claimants, which explains in detail why non-deployment claims are ineligible for compensation. The Supplemental Notice of Denial is attached at Exhibit F.

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 Appeal

No.	Claim ID	Reviewer	Recommendation
1	152	Rosen	Affirm

IRF Pending Claims

Notice of Appeals - Valuations

Affirmed Appeals

No.	Claim ID	Special Master's Point Award	Reviewer	Recommendation
1	10001138	215	Yanni	Affirm
2	212	350	Yanni	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:

1. In early August, 2019, the Special Master intends to file a motion with the Court seeking approval of all Current Claim dispositions, the dollar value of a point, and the form of release¹ to be executed by the claimant and submitted to the Special Master in order for the claimant to receive his or her allocated distribution (the "Motion"). The Motion will include a list of the awards to be given by claim number and claimant name; provided, however, that the claimant name shall be redacted to preserve confidentiality.

2. After filing the Motion, the Special Master will notify Current Claimants of their point award and the monetary value of the award (if any), which is subject to court-approval. Current Claimants also will be notified that they may object to the Motion by submitting a written response to the Special Master on or before August 30, 2019.

3. Shortly following the objection deadline, the Special Master will confer with Judge Steeh to review the Current Claim dispositions and any submitted objections.

4. Following that meeting, the Special Master will request that the Court enter an order approving the Motion as initially submitted or

¹ The Court previously approved conditioning payment on submitting a release and the content of the release as part of the IRF Methodology.

amended by the Special Master. Following approval by the Court, the Special Master shall commence the distribution process to eligible Claimants.

Dated: July 29, 2019

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on July 29, 2019, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk

EXHIBIT E

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

<hr/>)
UNITED STATES OF AMERICA,)	
Plaintiff)	Case No. 16-CR-20810-04
)	
v.)	Honorable George Caram Steeh
)	
TAKATA CORPORATION,)	
Defendant.)	
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**[PROPOSED] ORDER GRANTING SPECIAL
MASTER’S REQUEST FOR APPROVAL OF TENTH
DISTRIBUTION OF INDIVIDUAL RESTITUTION FUND**

Upon the request of Eric D. Green in his capacity as Special Master for approval of the Tenth distribution of the Individual Restitution Fund:¹

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Court [APPROVES] the Special Master’s determinations and recommendations regarding the Claimants listed in Exhibit A to the Distribution Request. The Special Master shall distribute the amount of \$1,320,920.00 to the Claimants listed on Exhibit A.

2. All objections submitted in connection with this Request are [OVERRULED].

¹ Capitalized terms used but not defined herein shall have the meanings set forth in the *Special Master’s Request for Approval of First Distribution of Individual Restitution Fund* (the “Distribution Request”).

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

EXHIBIT F

Takata Airbag Individual Restitution Fund and

Tort Compensation Trust Fund

P.O. Box 10472

Dublin, OH 43017-4072

888-215-9544

www.TakataSpecialMaster.com

www.TakataAirbagInjuryTrust.com



TAKATA AIRBAG
RESTITUTION FUND

TAKATA AIRBAG INJURY TRUST



Mail Date: July 19, 2021
Claim No: 10000742

Supplemental Notice of Denial

Dear 

This notice provides a further explanation regarding the basis on which your claim against the Takata Individual Restitution Fund (the IRF) was denied. The Special Master carefully reviewed the memorandum submitted in support of your appeal (the Appellate Memorandum), dated April 24, 2021, and discussed your claim file with the assigned IRF Review Officer. The IRF Review Officer and the Special Master agreed that a more detailed explanation regarding the basis on which your claim was denied was warranted. For the reasons provided below, the Special Master reaffirms: (i) the decision to deny your IRF Claim, and (ii) that non-deployment claims are not eligible for compensation from the IRF. For the avoidance of doubt, this notice is not subject to further appeal to an IRF Review Officer. However, you will be afforded the opportunity to submit an objection after the Special Master seeks court-approval of your claim denial before the Honorable George C. Steeh. Additional information on how to submit an objection will be communicated within the next 30 days.

I. Non-Deployment Claims are Not Eligible for Compensation Under the IRF Methodology

The IRF was created as a result of a Plea Agreement entered into between Takata Corporation and the U.S Department of Justice. In the Plea Agreement, Takata agreed to, among other things, pay restitution in the amount of \$125 million to individuals injured by the malfunction of a Takata phase-stabilized ammonium nitrate (PSAN) inflator. The \$125 million will almost certainly not provide full compensation to eligible claimants injured by defective PSAN airbag inflators.

The Plea Agreement provides that the “[the Special Master shall] make findings of fact and recommendations to this Court regarding: (a) the individuals and entities who should receive restitution; and (b) the restitution amounts which these individuals and entities should receive.”¹ Further, the *Order Appointing Eric Green as Special Master* directs the Special Master to “establish procedures . . . subject to court approval, to determine eligible claimants and amount of loss eligible for compensation from the Restitution Funds.”²

¹ See *Plea Agreement*, at 13.

² *Order Appointing Eric Green as Special Master*, at 4-5.



Claim No: 10000742

Pursuant to his duties under the Restitution and Appointment Orders to administer the Individual Restitution Fund, the Special Master developed a definition of “Eligible Claimant,” which is defined as:

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.³

The Court enter an order approving this definition.⁴ Based on the court-approved definition of “Eligible Claimant,” individuals injured from the non-deployment of a Takata airbag are not eligible for compensation from the IRF. Accordingly, the Special Master is not authorized to provide compensation to Mr. Shumate.

II. The Reliance on the Term “Non-Performing” in the Indictment and Plea Agreement is Not Persuasive

Your Appellate Memorandum argues that the multiple references in the Plea Agreement and Indictment to the term “non-performing” in connection with the term “Takata PSAN inflator” supports a more expansive definition for the Takata PSAN Inflator Defect, which should include non-deploying airbags. The Special Master does not find this argument persuasive. As your Appellate Memorandum acknowledges, the Court tasked the Special Master with developing a definition for “Eligible Claimants.” As described in the previous section, the definition is limited to Takata PSAN inflators that either rupture or aggressively deploy. Following a notice period and a hearing, the Court approved the Special Master’s definition in the *Order Granting Special Master’s Request for Approval of the Revised Individual Restitution Fund Methodology (Doc. 77) and Overruling Defendant’s Objection (Doc. 56)*. And as described in the following section, the Bankruptcy Court in a separate and independent proceeding also agreed that the non-deployment of an airbag inflator is unrelated to any “non-performance” of a Takata product. Thus, as two separate courts have independently held, the Special Master determined that non-deploying airbags are not attributable to any Takata defect.

III. The Bankruptcy Court Separately Held, and the District Court Affirmed, that Takata Products Are Not Involved in the Failure of an Airbag to Deploy

In addition to (and consistent with) Judge Steeh’s clear and definitive orders, Judge Shannon, who presides over Takata’s chapter 11 bankruptcy case, separately held that the defective non-deployment of an airbag is not caused by the malfunction of a Takata product. Following an

³ See *Revised Proposed Individual Restitution Fund Methodology*, at 3.

⁴ *Order Granting Special Master’s Request for Approval of the Revised Individual Restitution Fund Methodology (Doc. 77) and Overruling Defendant’s Objection (Doc. 56)*.



Claim No: 10000742

evidentiary hearing, where the Takata Trust's expert witness, Harold Blomquist, PhD, was subject to cross examination on this very issue, Judge Shannon held that "Takata inflators did not cause the non-deployment of airbags" and that "Takata inflators have no role in the failure of an airbag to deploy."⁵ Following an appeal of the Bankruptcy Courts opinion, on July 14, 2021, the District Court for the District of Delaware affirmed the Bankruptcy Court's decision, holding, "Appellant offers no basis for this Court to conclude that the Bankruptcy court committed any clear effort in finding that PSAN inflators manufactured by the Debtors did not play any role in the failure of an airbag to deploy[.]"⁶

In fact, the memorandum submitted in support of Mr. Shumate's appeal even acknowledges that the non-deployment of an airbag is caused by the malfunction of another component of the airbag module. The article cited by Mr. Shumate provides:

The ZF airbag control units or ACUs receive thousands of signals every minute from crash sensors. The sensors are located around the vehicle. If the sensors detect a crash is about to happen they send the signal to the ACU. Then the ACU sends the signal to the airbags to fire off and for the seat belts to tighten.⁷

As explained in the article, the ACU works together with crash sensors to direct an airbag to deploy following a collision. Takata did not manufacture ACUs or crash sensors. This is consistent with Dr. Blomquist's expert testimony in the bankruptcy court litigation. Thus, even if Judge Steeh's Orders did not prohibit the Special Master from providing compensation to non-deployment claimants, the Special Master would take the position that the non-deployment of an airbag is *not* caused by the malfunction of a Takata product.

Finally, the Special Master has noted your contention that former Takata engineer John Keller has "a strong belief" that the Takata airbag inflators may have had issues not accounted for. The Special Master is not aware of any probative evidence from Mr. Keller or any other source linking the non-deployment of an airbag to a Takata airbag inflator defect. With regard to your request for access to Takata airbag inflators, the Special Master possesses no authority or control over access and thus no ability to respond to your request. Moreover, as Dr. Blomquist has testified, Takata airbags inflators have been subject to over 300,000 independent tests with no evidence suggesting any defect resulting in a failure to deploy.

⁵ *In re TK Holdings Inc.*, No. 17-11375 (BLS), 2020 WL 6820751, at *1 (Bankr. D. Del. Oct. 8, 2020).

⁶ *In re TK Holdings, Inc., et al., Debtors. James F. DeBouno, Jr., Appellant, v. Eric D. Green, in his capacity as Tr. of the PSAN PI/WD Tr. d/b/a the Takata Airbag Tort Comp. Tr. Fund, & TK HOLDINGS, INC., et al., Appellees. Additional Party Names: Nat'l Highway Traffic Safety Admin.*, No. 17-11375 (BLS), 2021 WL 2949344 (D. Del. July 14, 2021).

⁷ <https://www.motorbiscuit.com/15-million-vehicles-involved-in-zf-airbag-lawsuit/>

IV. Conclusion

The Special Master does not dispute that your airbag failed to deploy or that your injuries were likely caused (or at least enhanced) by the non-deployment of the airbag. And as previously communicated, the IRF does not limit your ability to sue the ACU component manufacturer or the OEM. However, the Special Master's duties are limited to providing compensation to individuals injured by the rupture or aggressive deployment of a Takata PSAN inflator. For the reasons discussed above, the Special Master determined that your claim is not eligible for compensation from the IRF. The Special Master has reviewed the proposal in your June 22, 2021 Letter and respectfully declines. The Special Master has no authority or discretion to expend IRF resources on claims that are by definition not compensable.