



Allocation for the OEM Restitution Fund. Since the Special Master's *Second Status Report* [ECF No. 52] (the "*Second Status Report*"), the Consenting OEM Group has grown in number and is now comprised of OEMs who collectively purchased approximately 99.53% of the PSAN Inflators sold by Takata as of December 31, 2016. Following the Special Master's independent review, the Special Master determined that the Proposed Allocation is fair, equitable, and consistent with the Plea Agreement and Restitution Order. The Special Master shared the Proposed Allocation with Takata and the Government and received no objections.

3. On November 28, 2017, the Court entered the *Order Granting Special Master's Request for Approval of Proposed Notice Program for Proposed OEM Allocation Protocol*, dated Nov. 28, 2017 [ECF No. 50]. Thereafter, the Special Master implemented the notice program to notice the Proposed Allocation to all OEMs eligible to receive restitution under the Plea Agreement and Restitution Order.

4. The notice program included a direct notice that was mailed and emailed to the OEMs and a publication notice that was published via several media sources, including online, print, and email news sources. The direct notice and publication notice were also published on the Special Master's website, [www.takataspecialmaster.com](http://www.takataspecialmaster.com).

5. In addition, the Special Master directed two alleged whistleblowers represented by Constantine Cannon LLP (the “Constantine Cannon Represented Alleged Whistleblowers”) and an alleged whistleblower represented by Clayton, McKay & Bailey, PC (the “CMB Represented Alleged Whistleblower,” and together with the Constantine Cannon Represented Alleged Whistleblowers, the “Alleged Whistleblowers”) to the docketed Proposed Allocation.

6. Interested parties were given until December 20, 2017 at 5:00 p.m. EST to submit any objections to the Proposed Allocation. The Special Master received no objections from any OEM. The only objections received by the Special Master were two objections from the Alleged Whistleblowers: one from the Constantine Cannon Represented Alleged Whistleblowers and one from the CMB Represented Alleged Whistleblower (the “Objections”).

7. Both Objections assert that the Alleged Whistleblowers are eligible for an award under the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. § 30172 (the “Act”) and therefore that the OEM Restitution Fund must remain available as a source of recovery in the event that an award is granted by the Secretary of Transportation. The Alleged Whistleblowers requested that the Special Master reserve thirty percent, or \$255 million, of the OEM Restitution Fund until a final determination of the Alleged Whistleblowers’ claims is made by the Secretary of Transportation.

8. At the request of the Special Master, the Alleged Whistleblowers provided the Special Master with their applications for an award under the Act and supporting documentation submitted to the Secretary of Transportation (the “Alleged Whistleblowers’ DOT Submissions”). The Special Master has reviewed these materials as well as the Objections, and has met and conferred with counsel for the Alleged Whistleblowers several times. Moreover, with the consent of the Alleged Whistleblowers, the Special Master circulated their Objections and the Alleged Whistleblowers’ DOT Submissions to the Consenting OEMs. At the request of the latter, he allowed the Consenting OEMs an opportunity to respond to the Objections, which the Consenting OEMs did on January 17, 2018 in a single response that was delivered to the Special Master and the Alleged Whistleblowers. Upon the request of the Alleged Whistleblowers, the Special Master provided them the opportunity to reply to the Consenting OEMs’ response, which they did on January 24, 2018, with separate replies submitted by the Constantine Cannon Represented Alleged Whistleblowers and the CMB Represented Alleged Whistleblower. The Special Master has also encouraged a dialogue between the Consenting OEMs and the Alleged Whistleblowers.

9. As noted in the *Second Status Report*, the Special Master plans to submit for Court approval a Proposed Final Allocation Plan for the OEM Restitution Fund by the end of January 2018. In that submission, the Special Master will make

a recommendation as to the Alleged Whistleblowers' Objections for the Court's consideration and approval.

**B. DEVELOPING A FORMULA FOR ALLOCATING THE \$125 MILLION INDIVIDUAL RESTITUTION FUND.**

10. During the Reporting Period, the Special Master completed a preliminary proposal for allocating the \$125 million Individual Restitution Fund. On December 27, 2017, the Special Master submitted the proposed Individual Restitution Fund Methodology to the Court for approval. *See Special Master's Request for Approval of the Individual Restitution Fund Methodology*, docketed on Jan. 2, 2018 [ECF No. 54]. The Methodology identifies the proposed approach for allocating the Individual Restitution Fund, and it proposes a claims administration process and notice program.

11. Among other things, the Methodology contemplates allocating a portion of the Individual Restitution Fund for current claims arising from injuries that occur prior to the Current Claims Cutoff Date, now projected to be April 2, 2018, and which are filed with the Special Master by the Current Claims Filing Deadline, now projected to be May 15, 2018 (the "Current Claims"). The balance of the Individual Restitution Fund will be reserved for future claims arising from injuries that occur on or after the Current Claims Cutoff Date or which are filed with the Special Master after the Current Claims Filing Deadline (the "Future Claims"). As detailed in the *Special Master's Request for Approval of the Individual*

*Restitution Fund Methodology*, the Special Master’s economist estimates that approximately 80% of the Individual Restitution Fund will need to be reserved for Future Claims, leaving 20% available to compensate eligible Current Claims. However, the precise amounts of the Individual Restitution Fund reserved for Future Claims and the amount available for Current Claims will be calculated once the number of actual Current Claims is known, *i.e.*, soon after the Current Claims Filing Deadline.

12. The number and value of all anticipated Current and Future Claims estimated by every expert economist in this matter and the U.S. Bankruptcy Proceedings far exceeds the \$125 million in the Individual Restitution Fund. Accordingly, in allocating the Individual Restitution Fund among both Current and Future Claimants, the Special Master will utilize a relative valuation approach to determine awards to eligible claimants, assigning points based on injury categories in the proposed injury valuation matrix and certain other factors, and then converting the points assigned to each claim to a monetary award based on the number and value of allowed claims and the funds available. Future Claims will be valued and paid the same 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 (the “True-up”).

13. Pursuant to the Court's *Order Directing Clerk to File Special Master's Request for Approval of the Individual Restitution Fund Methodology*, dated Jan. 2, 2018 [ECF No. 53], interested parties were required to file any objections to the Methodology by January 11, 2018. The sole objection was filed by Takata to challenge the exclusion of foreign nationals injured outside the United States and in cars not registered in the United States from the definition of "Eligible Claimants" in the proposed Methodology. The Court has ordered that the Government file a response to this objection on or before February 1, 2018 and that Takata may file a reply on or before February 12, 2018. *See Order Requiring Responsive Pleading*, dated Jan. 19, 2018 [ECF No. 57].

14. In addition, the Constantine Cannon Represented Alleged Whistleblowers filed a response reserving the right to make a formal claim against the Individual Restitution Fund in the future.

15. The Special Master intends to seek Court approval of the proposed direct notice and publication notice in the near term and, upon Court approval, to launch the notice program for the Individual Restitution Fund in early March 2018.

**C. DEVELOPMENTS IN THE U.S. BANKRUPTCY PROCEEDINGS.**

16. In the U.S. Bankruptcy Proceedings, it is anticipated that a trust (the "PSAN PI/WD Trust") will be created to administer, resolve, and liquidate claims relating to personal injury or wrongful death: (i) caused by the malfunction of a

PSAN Inflator sold or supplied (a) prior to the Petition Date (the “PSAN PI/WD Claims”); (b) between the Petition Date and the Closing Date (the “Administrative Expense PSAN PI/WD Claims”); or (c) on or after the Closing Date (“Post-Closing PSAN PI/WD Claims”); or (ii) caused by a Takata product sold or supplied between the Petition Date and the Closing Date (“Administrative Expense PI/WD Claims”). Pursuant to a permanent injunction provision in the proposed plan of reorganization, all PSAN PI/WD Claims against TKH, its affiliated debtors, and any Consenting OEM that elects to become a “Participating OEM” and contribute funds to the PSAN PI/WD Trust will be channeled to the PSAN PI/WD Trust.

17. It is further anticipated that the parties to the bankruptcy and the creators of the PSAN PI/WD Trust will ask the Special Master to serve as the Trustee of the PSAN PI/WD Trust and administer the Individual Restitution Fund in coordination with the administration of the PSAN PI/WD Trust. The Special Master has engaged in a number of discussions on this issue with these parties and will continue to work with all parties-in-interest and this Court to create an efficient claims handling process for claimants participating in the Individual Restitution Fund and the PSAN PI/WD Trust. Costs and expenses incurred in connection with these bankruptcy-related discussions are being separately accounted for and not charged to Takata.

18. Further, on December 27, 2017, the Special Master filed an objection to the disclosure statement in the U.S. Bankruptcy Proceedings stating that the proposed plan of reorganization inappropriately shifts the obligation to pay the Special Master's fees and costs from Takata to a reserve of cash administered by the Plan Administrator—a TKH employee, and improperly interferes with the jurisdiction of this Court in connection with the Restitution Funds. *See Objection of Eric D. Green, in his Capacity as Special Master of the Takata Corporation Criminal Restitution Funds, to Disclosure Statement for Amended Joint Chapter 11 Plan of Reorganization of TK Holdings Inc. and its Affiliated Debtors, In re TK Holdings, Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. Dec. 27, 2017) [ECF No. 1481]. The Special Master appeared in the U.S. Bankruptcy Proceedings at the January 3, 2018 hearing in connection with this objection, and retained Blank Rome LLP as Delaware local counsel for this purpose, subject to Court approval. The Special Master continues to work with the Debtors to resolve his objection to the proposed plan before the confirmation hearing scheduled for February 13, 2018 in the U.S. Bankruptcy Proceedings.

**D. ENGAGEMENT OF LIEN RESOLUTION AGENT.**

19. The Special Master has retained, subject to Court approval, Lien Resolution Group as a lien resolution agent to assist with developing and

implementing a medical lien resolution strategy in connection with the Individual Restitution Fund.

**II. GOING FORWARD EFFORTS.**

20. Over the next 30-60 days, the Special Master and his team plan to seek Court approval of the notice program for the Individual Restitution Fund, currently intended to launch in early March 2018. With the assistance of his claims administrator Garden City Group, the Special Master will seek to finalize proposed claim forms, lists of required supporting documentation, and an online portal where claimants and their representatives can file claims, upload supporting documentation, and monitor claim status.

**CONCLUSION**

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

Dated: January 29, 2018

Respectfully submitted,

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

Eric D. Green, Special Master