

MHN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	No. 06 CR 964
	)	
v.	)	Judge Ronald A. Guzman
	)	
MICHAEL E. KELLY	)	

**AMENDED CLAIMS PROCEDURE ORDER**

**I. DEFINITIONS**

As used herein, the following words shall have the following meanings:

- (i) ***“Claims Bar Date”*** shall mean the date established by this Claims Procedure Order by which a Victim Claim Form must be postmarked and sent to the Claims Processing Agent as described herein to avoid being barred. Subject to certain extensions provided for under Section II.(iv), the Claims Bar Date is one hundred and twenty (120) days after entry of this Claims Procedure Order, or August 25, 2010.
- (ii) ***“Claims Packet”*** shall mean the materials directed by this Claims Procedure Order to be provided to Victims known to the Claims Processing Agent including: (a) a Victim Claim Form; (b) this Claims Procedure Order; and (c) Summarizing Letter as defined below.
- (iii) ***“Claims Procedure”*** shall mean the procedure established for evaluating and distributing restitution to the victims as outlined in this Claims Procedure Order.

- (iv) ***“Claims Procedure Order”*** shall mean this Order adopting the Claims Procedure and providing for implementation thereof, entered by this Court as of the date set forth therein.
- (v) ***“Claims Processing Agent”*** shall mean Phillip S. Stenger of Stenger & Stenger P.C., 4095 Embassy Drive SE, Grand Rapids, MI 49546, Phone: 1-877-482-4119, Fax: 1-800-429-5805 and Email: [claimsagent@stengerlaw.com](mailto:claimsagent@stengerlaw.com).
- (vi) ***“Court”*** shall mean the United States District Court for the Northern District of Illinois, Eastern Division.
- (vii) ***“Court Clerk”*** shall mean the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, Everett McKinley Dirksen, United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604.
- (viii) ***“Final Determination Notice”*** shall mean the notice sent by the Claims Processing Agent stating the Claims Processing Agent’s final determination concerning a Victim’s Request for Redetermination (the ***“Final Determination”***).
- (ix) ***“Governmental Authorities”*** shall mean federal, state, and local regulatory authorities, including, without limitation, taxing, workmen's compensation, and unemployment authorities.
- (x) ***“Kelly”*** shall refer to Defendant Michael E. Kelly.
- (xi) ***“Kelly Assets”*** shall include any asset of any type, which is owned, or controlled by defendant Kelly or by any entity owned or controlled by defendant Kelly, and which is now or which hereafter comes under the control of the court through the Special Master.
- (xii) ***“Partial Determination Notice”*** shall mean a notice issued by the Claims Processing Agent that resolves certain issues concerning the particular

Victim Claim Form or refers other issues to the Court for determination. This is not a Final Determination.

- (xiii) ***“Request for Adjudication”*** shall mean the Victim Claimant’s request to the Court Clerk asking for an adjudication of the Claims Processing Agent’s Final Determination.
- (xiv) ***“Request for Redetermination”*** shall mean the Victim Claim Form, together with any necessary supporting documentation, filed by the Victim Claimant with the Claims Processing Agent requesting that the Claims Processing Agent re-evaluate the Victim’s Total Restitution Amount.
- (xv) ***“Restitution Trust”*** shall mean the legal structure put in place to allow the Special Master to obtain control over the Kelly Assets and the companies owning and operating the Kelly Assets in order to liquidate the Kelly Assets and permit the repatriation of funds to the U.S. for distribution to the victims.
- (xvi) ***“Special Master”*** shall mean Douglas A. Doetsch, special master in the case of *United States of America v. Michael E. Kelly*, appointed by this Court pursuant to the Order Appointing Douglas A. Doetsch As Special Master dated February 10, 2009 to preserve and repatriate the Kelly Assets, administer their liquidation and distribute restitution to the victims of the Defendant.
- (xvii) ***“Summarizing Letter”*** shall mean a letter from the Claims Processing Agent summarizing the Claims Procedure in a form approved by the Court.
- (xviii) ***“Third Party Distributions”*** shall mean monies received as the result of any action relating to your investment in the Universal Lease Program or its affiliated entities including any actions you personally brought to recover your investments. It also includes all payments by third parties to victims in

any way related to the Universal Lease Program even though no litigation was filed in connection therewith.

(xix) **“Total Out-of-Pocket Investment”** shall mean the amount of money invested by victims in the Universal Lease Program as described in *USA v. Kelly, et al.* Case No. 06-CR-964 (U.S. District Court Northern District of Illinois Eastern Division) (“USA v. Kelly”).

(xx) **“Total Payments”** shall mean the amount of money received by victims from the Universal Lease Program as described in *USA v. Kelly* from 1999 until 2005. Total payments include but are not limited to (a) rental payments; (b) lease payouts; (c) payments received as part of a negotiated repurchase of an investors’ lease through Club Vacacional de Panama (“CVP”); (d) money actually received from judgment or settlements of a claim, a lawsuit or arbitration proceeding; (e) refunds received from a broker or from Michael E. Kelly; or (f) any interest payments.

(xxi) **“Total Penalties”** shall mean any surrender fees or early withdrawal penalties incurred by a Victim when liquidating investments in order to invest in a Universal Lease Program.

(xxii) **“Total Restitution Amount”** shall mean the maximum dollar value a Victim is entitled to receive under the Claims Procedure. Such amount is the Total Out-of-Pocket Investment less Total Payments plus Total Penalties. Victims who have a Total Restitution Amount of zero or less will not be entitled to participate in a distribution. In calculating the Total Restitution Amount for victims with multiple investments, the Claims Processing Agent may net positive and negative Total Restitution Amounts for each lease to arrive at one combined Total Restitution Amount for each investor. Such amount shall be the basis for the dollar value awarded to

- Victims, however, the amount of the actual distribution to victims may be reduced depending on the value of the funds recovered. If there are insufficient funds to make full restitution to all Victims, each Victim will receive a pro rata share of the proceeds available for restitution.
- (xxiii) **"Trade Creditor"** shall mean: (a) those natural persons and business entities that have provided goods or services or otherwise have claims against the Kelly Business Entities; and (b) those Governmental Authorities with claims against the Kelly Business Entities.
- (xxiv) **"United States Attorney's Office (USAO)"** shall mean the Office of the United States Attorney which filed the *USA v. Kelly* case and which is located at: 219 S. Dearborn St. 5<sup>th</sup> Floor, Chicago IL, 60604.
- (xxv) **"Universal Lease Program"** shall mean the series of investments and leases described in *USA v. Kelly*.
- (xxvi) **"Victim"** shall mean a natural person or entity that invested in a Universal Lease Program but shall not include any Trade Creditor (as defined herein) in its capacity as such.
- (xxvii) **"Victim Claimant"** shall mean a Victim that has timely filed a Victim Claim Form as prescribed in the Claims Procedure and is participating in the restitution process. Classification of a Victim as a Victim Claimant does not involve any determination of the validity, amount, or priority of a Victims' Claim, or the entities potentially liable therefore.
- (xxviii) **"Victims' Claims"** shall mean those claims of purported Victims against Michael E. Kelly for losses sustained as a consequence of investment in a Universal Lease.
- (xxix) **"Victim Claim Form"** shall mean the statement initially prepared by the Claims Processing Agent showing the Victim's Total Restitution Amount (to

the extent the Claims Processing Agent's records show that the Victim has a Total Restitution Amount greater than zero), investment information, and contact information. The Claims Processing Agent must receive from each Victim a Victim Claim Form indicating agreement or disagreement with the Total Restitution Amount and, if the Victim disagrees with the Total Restitution Amount, the Victim must provide all such document to support the objection as exists and as required by the Claims Procedure and provide a detailed explanation as to how the Victim arrived at what s/he believe her/his Total Restitution Amount should be. The Victim Claim Form **must** be postmarked by the Claims Bar Date.

## II. THE CLAIMS PROCEDURE

The following, including the definitions set forth above, is hereby established as the Claims Procedure:

- (i) Within sixty (60) days following the entry by the Court of the Claims Procedure Order, the Claims Processing Agent shall mail or cause to be mailed the Claims Packet to all Victims known to the Claims Processing Agent by United States First Class Mail.
- (ii) Within forty-five (45) days following the entry of the Claims Procedure Order, the Claims Processing Agent shall also: (a) post a copy of the Claims Procedure Order, including Exhibits, on the Claims Processing Agent's Kelly website, [www.michaelekelly.com](http://www.michaelekelly.com) and (b) publish a notice of the Claims Procedure once in the national edition of either *USA Today* or *The Wall Street Journal* and/or *AARP The Magazine*. The United States Attorney's Office ("USAO") will also post a copy of the

Claims Procedure Order on the password protected website, [www.notify.usdoj.gov](http://www.notify.usdoj.gov), which victims can access with a Victim Identification Number (“VIN”) and Personal Identification Number (“PIN”) provided to them by the USAO.

- (iii) The Claims Processing Agent shall promptly provide a Claims Packet to any Victim that requests one.
- (iv) As provided in the Claims Procedure Order, to preserve their claims Victims must review the Victim Claim Form, indicate their agreement or disagreement with the Total Restitution Amount calculated, execute the Victim Claim Form and return the Victim Claim Form to the Claims Processing Agent by postmarking it on or before the Claims Bar Date.
- (v) Any Victim who disagrees with the Total Restitution Amount as set forth in the Victim Claim Form file with the Claims Processing Agent a properly completed Victim Claim Form indicating such Victim’s disagreement with the Total Restitution Amount as determined by the Claims Processing Agent together with a statement of what the Victim believes their Total Restitution Amount should be along with all supporting documentation and a detailed explanation of how the Victim calculated his/her purported Total Restitution Amount. Such Victim Claim Form must be postmarked by the Claims Bar Date.
- (vi) The Claims Bar Date for the return of all Victim Claim Forms shall be one hundred and twenty (120) days following the date of entry of the Claims Procedure Order, or August 25, 2010. Following the entry of the Claims Procedure Order, the Claims Processing Agent will have sixty (60) days to send the Victim Claim Forms to the Victims. Victims will then have sixty (60) days, or until the Claims Bar Date, to review and

execute the Victim Claim Form and return the Victim Claim Form to the Claims Processing Agent. Unless waived by the Claims Processing Agent in his sole discretion for good cause shown, any Victim that does not file a properly completed Victim Claim Form with the Claims Processing Agent on or before the Claims Bar Date shall be forever barred from asserting a claim against the Special Master or the Claims Processing Agent or their agents, the Restitution Trust, the Kelly Assets (as defined above), or any purchaser of any asset which is now or should hereafter come under the control of the court through the Special Master. However, no part of this order shall preclude victims from seeking to enforce any claims they may have against Michael E. Kelly in his personal capacity, or against any agent, servant, co-conspirator of Michael E. Kelly or any assets owned by or affiliated with Michael E. Kelly that have not been transferred to the control of the court through the Special Master. The Victim Claim Form must be postmarked by the Claims Bar Date. Victims shall bear the burden of ensuring that the Victim Claim Forms and supporting documentation have been properly and timely received by the Claims Processing Agent. The Claims Processing Agent will mail an acknowledgment of receipt letter to all victims who return a Victim Claim Form.

- (vii) A Victim's return of a Victim Claim Form in which they disagree with the stated Total Restitution Amount will be treated as a Request for Redetermination of the Total Restitution Amount. The Claims Processing Agent will review the Kelly records in his possession together with the information provided by the Victim in making his Redetermination. Requests for Redetermination shall clearly set forth



the Victim's basis for requesting a redetermination of the Total Restitution Amount and shall include any supporting documentation. The Claims Processing Agent shall review each Request for Redetermination to determine the validity of such request, together with any additional conclusions of the Claims Processing Agent on other issues relevant to the Victim Claim Form. Each Victim Claimant filing a Request for Redetermination shall have the burden of proof to establish the validity of his Request; and the Claims Processing Agent shall have the right to request, and the Victim Claimant shall be obligated to provide to the Claims Processing Agent, any additional information and/or documentation deemed relevant by the Claims Processing Agent in order to make the Claims Processing Agent's Final Determination. The Claims Processing Agent shall mail by United States First Class Mail a Final Determination Notice to each Victim Claimant filing a Request for Redetermination setting forth the Claims Processing Agent's conclusions concerning such Request for Redetermination. The Claims Processing Agent shall also have the right to refer the Request for Redetermination of any Victim Claimant to the Court for final determination.

- (viii) Any Victim Claimant that is dissatisfied with the Claims Processing Agent's Final Determination concerning its Request for Redetermination, as reflected in the relevant Final Determination Notice, may appeal the Claims Processing Agent's Final Determination to the Court by filing a written Request for Adjudication with the Court Clerk, with a copy to the Claims Processing Agent. Such written Request for Adjudication must be addressed to Clerk of the Court, Northern District of Illinois, 219 S.

Dearborn, 20<sup>th</sup> Floor, Chicago, IL 60604 and mailed by the requesting Victim Claimant within sufficient time to ensure that it is received by the Court Clerk and the Claims Processing Agent no later than thirty (30) days after the date on which the Final Determination Notice was postmarked. The burden of ensuring such timely receipt shall be upon the Victim Claimant. The Request for Adjudication shall clearly explain the Victim Claimant's disagreement with the Claims Processing Agent's Final Determination as reflected in the Final Determination Notice and shall include copies of all relevant documentation, which shall also be provided to the Claims Processing Agent. Failure to properly and timely request adjudication of a Claims Processing Agent's Final Determination as reflected in the relevant Final Determination Notice shall permanently waive the Victim Claimant's right to object to or contest the Claims Processing Agent's Final Determination. The Claims Processing Agent shall have the right, in his sole discretion, to file with the Court Clerk a written response to such Request for Adjudication, with copies to the appealing Victim Claimant.

- (ix) A Victim Claimant requesting adjudication shall have the right to reasonable discovery from the Claims Processing Agent if necessary for the proper preparation and presentation of the Victim Claimant's claim, so long as such discovery and its manner of conduct would not interfere with, or unduly burden, the administration of the Restitution Trust and the Claims Procedure. If the Claims Processing Agent and the Victim Claimant cannot agree concerning the reasonableness and appropriateness of such discovery request and/or implementation, the request for discovery shall be referred to the Court for determination. A

revised written Request for Adjudication, with supporting documentation, may be filed with the Court Clerk by the Victim Claimant, with copies to the Claims Processing Agent, within fifteen (15) days after the date such discovery materials are delivered to the Victim Claimant by the Claims Processing Agent.

- (x) In the event that a Victim Claimant properly requests adjudication of a Claims Processing Agent's Determination, or the Claims Processing Agent requests that a Victim Claim be referred to the Court for determination, such matter may be referred to a Magistrate Judge. The Magistrate Judge shall review the documentation provided by the Victim Claimant and the Claims Processing Agent. At that time, the Magistrate Judge may make a final determination or may set the matter for hearing and at the conclusion of the hearing make a final determination. The Victim Claimant shall have the burden of proof in any such referral, whether the Victim Claim is before the Magistrate Judge based upon a Request for Adjudication from a Claims Processing Agent's Final Determination, or a request by the Claims Processing Agent that the determination of such Victim's Claim be referred to the Court. Victim Claimants are not required to personally attend the proceedings but may attend either in person or telephonically should they so choose.
- (xi) The burden of notifying the Claims Processing Agent of a Victim or Victim Claimant's current address and other contact information, and of ensuring that the Claims Processing Agent has a Victim or Victim Claimant's name and/or proper contact information, shall be upon the Victim or Victim Claimant and the Claims Processing Agent shall be under no obligation to attempt to determine current contact information

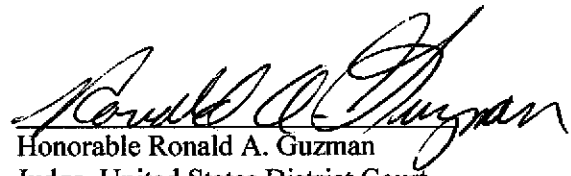
for any Victim or Victim Claimant or to determine the identity of Victims who have not yet been identified. The USAO shall provide to the Claims Processing Agent any Victim contact information in its possession, but shall not be liable for its failure to do so.

- (xii) No Victim or Victim Claimant who has failed to timely file an appropriate Victim Claim Form, Request for Redetermination, or Request for Adjudication, shall be permitted to object to the barring or treatment of their Claim on the basis: (a) that the Claims Processing Agent failed to mail, or that such Victim or Victim Claimant failed to receive, a copy of the Claims Procedure Notice, the Victim Claim Form or the relevant Final or Partial Determination Notice; (b) that a Victim Claim Form or Request for Adjudication made by the Investor Claimant was improperly reflected as not having been received by the Claims Processing Agent or the Court Clerk; or (c) that the Claims Processing Agent did not have a Victim's name and/or proper contact information.
- (xiii) After the Claims Processing Agent has filed a definitive list of the approved Victim Claims, the Special Master, upon consultation with his Claims Processing Agent, shall make a recommendation to the Court as to the manner, amount, and timing of distribution of funds to Victim Claimants as set forth in the Claims Procedure Order.
- (xiv) The Court hereby exonerates and indemnifies the Claims Processing Agent, the Special Master and their attorneys, accountants, principals, agents, contractors, employees and representatives, from any liability for or arising out of the claims process or distribution of the distributable assets pursuant to the Claims Procedure Order, except upon finding by

the Court that such person has acted or failed to act as a result of bad faith or total disregard of duties.

- (xv) The Court reserves the right to amend this Claims Procedure Order from time to time. This Court also reserves the exclusive jurisdiction and venue to interpret and enforce the Claims Procedure Order and to resolve disputes concerning, arising out of or affecting the Claims Procedure Order, its validity, interpretation, implementation, enforcement and effect.

AS ORDERED BY THIS COURT on the <sup>14</sup>~~27~~th day of <sup>JUNE,</sup>~~April,~~ 2010.



Honorable Ronald A. Guzman  
Judge, United States District Court  
Northern District Illinois, Eastern  
Division.