

Explanation of the Length and Costs of the Kelly Asset Sale Process

In response to the questions posed by many of the victims, I, in my role as the Special Master, and in coordination with the U.S. Attorney's Office, believe it is important to explain the reasons for the time and expense that have been required to dispose of the Kelly assets. While there have been many contributing factors, there are five primary reasons that the restitution process has been lengthy and expensive. First, the process is inherently cumbersome and slow, as it requires ensuring good title to all assets, locating appropriate and willing purchasers for the assets, negotiating with prospective buyers, and entering a publication period before eventually closing on the sale of an asset. Second, Grupo Kelly's reputation in the market and the awareness in the market of a court-mandated liquidation process have reduced the number of potential buyers and increased the cost and length of asset purchasers' diligence process for the assets. Third, the impact of the downturn in US and foreign financial and real estate markets has had a substantial impact on the Cancun market, causing a drop in real estate prices. Fourth, determining the appropriate calculation of the victims' restitution amounts and the proper method of disbursing restitution payments to the victims has presented many complex issues and further delayed the payment of restitution. Fifth, various factors have reduced both the availability of funds at Grupo Kelly and the value of the Kelly assets. These five factors, in addition to a number of other complexities, have resulted in a less fruitful and slower restitution process than initially envisioned.

1. The Restitution Sales Process.

The restitution sales process was designed to both provide accountability for the Special Master's activity and to enhance the financial return to the victims. However, this process often comes with costs to speed and efficiency. No buyer will purchase any Kelly asset unless quite satisfied that the Special Master can provide clear title under local law (typically, Mexican law). Unfortunately, Grupo Kelly's record keeping was too often poor, and it has required many hours of work by the Special Master and his advisors to ensure marketable title. Once title to the assets is appropriate for sale, the Special Master must survey the market for prospective purchasers. When potential purchasers are found, there is an often lengthy negotiation and diligence process to determine whether the parties can agree on appropriate sales conditions and prices. If not, the process begins anew.

If the Special Master and the potential buyer reach an agreement concerning a major asset, the principal terms of the agreement are published in a local newspaper, and other potential buyers are invited to make a better offer to the Special Master. If a better offer comes in, it further lengthens the process with negotiation and due diligence.

The Special Master certainly supports the court-ordered process, but to understand the reasons for the length and cost of the restitution sales process, one must understand that the same methodical checks that ensure the law is followed and assets are sold for as much as the market will pay also cause the process to be a lengthy one.

2. Kelly Family Reputation.

The negative reputation of Grupo Kelly resulting from the Universal Lease scheme and the U.S. criminal charges against Michael E. Kelly has tainted the assets and lengthened the sales process for the assets.

Potential buyers of the Kelly assets have expressed fear that along with the asset they may be taking on unknown liabilities, such as Mexican taxes, Mexican labor obligations and U.S. criminal sanctions, in addition to many others. These fears have kept any potential buyers of Kelly assets from purchasing any of the Kelly corporations or other legal entities, which would be a relatively straightforward transaction. Because potential purchasers are not willing to buy shares of a Kelly entity, the only alternative is to offer for sale the assets owned by these entities. Asset purchases, especially of the largest assets (*e.g.*, Puerto Cancun), necessitate a lengthy diligence process. Prospective buyers of the larger assets are careful and employ their own professionals who apply often exacting standards to satisfy themselves that these assets will be prudent purchases. The extended diligence

process increases the risk that the deal will not be consummated, increases professionals' fees and delays the eventual closing of the transaction.

3. Global Real Estate/Financial Crisis.

The global real estate/financial crisis has had a meaningful impact on the timeline for and amount of restitution, decreasing the amount of market participants and the willingness to pay of those still in the market. Additionally, the most valuable Kelly assets are real estate, the market that was one of the hardest hit by the global recession.

While the markets have seen an improvement since the lows of 2007-2009, there remain significant concerns and caution on the part of real estate investors. As an example, the current concerns over sovereign debt in Europe have had an impact on the Cancun market. Europeans, or investors with significant investments in Europe, make up a significant portion of the investors potentially interested in the Cancun market.

4. Allocation of Restitution Amounts.

The determination of the appropriate allocation of restitution amounts has presented many complex questions and further delayed the payment of restitution. In order to determine the appropriate allocation of restitution amounts, the Special Master and his advisors have had to resolve: (a) each claimant's status as a victim and the legitimacy of their restitution claims; (b) how to make payments to victims who have invested through third party IRA investment funds; (c) how to make payments to victims who are deceased; (d) contested restitution amounts; (e) how to treat brokers' restitution claims; and (f) the method of disbursing restitution payments to the victims. The process has been methodical but lengthy, as it has necessitated substantive input from the U.S. Attorney's Office, the Special Master and his advisors, and the Court (through Magistrate Judge Morton Denlow).

5. Operational and Economic Setbacks.

Various factors have reduced the availability of funds at Grupo Kelly and adversely impacted the value of the Kelly assets. Bluntly, the majority of Kelly's businesses were not profitable and therefore provides no incentive for purchase other than for the value of the underlying assets. In addition, previous mismanagement left the Grupo Kelly businesses with environmental and tax liabilities that have reduced the value of the assets, slowed the sales process of the assets (by extending negotiations and diligence periods), and led to the freezing of certain Grupo Kelly bank accounts by Mexican tax authorities. The combination of these factors and many others has reduced the ability of Grupo Kelly to make necessary capital investments, lengthened the Kelly asset sales process and reduced the value of the Kelly assets that are to be sold by the Special Master.

Conclusion

I understand that many of the victims are frustrated by the pace of the restitution process, and I can assure you that my office is working towards selling Kelly assets as quickly as possible at the best possible price. I hope this explanation provides a better understanding of the complexities in the process and gives you confidence that every effort is being taken to bring restitution to the victims of the Universal Lease scheme as soon as possible.