

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) Judge Ronald Guzman  
 )  
MICHAEL E. KELLY )

**REDACTED MOTION FOR AN ORDER AUTHORIZING THE SPECIAL  
MASTER TO CREATE A MEXICAN GUARANTY TRUST TO TAKE TITLE TO AND  
POSSESSION OF THE ASSETS IN THE RESTITUTION FUND**

Douglas A. Doetsch, not individually but solely as the court-appointed Special Master (“Special Master”) in the *United States of America v. Michael E. Kelly*, by and through his attorneys, requests that this court enter an order authorizing the Special Master to create an irrevocable administration and guaranty trust governed by Mexican law to hold the Assets<sup>1</sup> and the companies holding the Assets, through which the Assets in the Restitution Fund<sup>2</sup> are to be held for the benefit of the victims. In support of this motion, the Special Master represents as follows:

**Background**

1. On October 9, 2008, the Court issued an order (the “October 9, 2008 Order”) granting the United States’ agreed motion for appointment of a special master, pursuant to 21 U.S.C. § 853(e) and 18 U.S.C. § 3664(d)(6), to assist the Court in preserving and repatriating the

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<sup>1</sup> “Assets” means all of the Defendant’s property and rights to property, including real property, personal property and intangible property, wherever located and whether held or controlled by the Defendant or any other entity, in which the Defendant has (or had during the scheme to defraud described in the Criminal Information in this case) (the “Information”) any direct, indirect or beneficial interest of any kind whatsoever. Assets shall also include any other property or rights to property traceable to the proceeds of the fraudulent scheme charged in the Information. Assets also include, but are not limited to, the property and rights to property listed on Exhibit A of the February 10, 2009 Order.

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Order Appointing Douglas A. Doetsch as Special Master (the “February 10, 2009 Order”).

Defendant's assets potentially subject to forfeiture, administering their liquidation, and distributing restitution to the victims of the Defendant's fraud charged in the Information (as defined below). The October 9, 2008 Order also addressed the reasons for the appointment of a special master and, further, requested proposals from candidates to serve as special master.

2. On February 10, 2009, the Court issued an order appointing Douglas A. Doetsch as Special Master.

3. The February 10, 2009 Order requires that the Special Master, after consultation with the parties, put forth for Court approval a suggested Legal Structure to take title to and possession of the Assets in the Restitution Fund, through which the Assets in the Restitution Fund are to be held for the benefit of the victims (and to pay the fees and expenses of the Special Master and his retained professionals) until the Special Master has fulfilled his duties thereunder.

#### **Relief Requested**

4. By this motion, the Special Master seeks authorization to create an irrevocable administration and guaranty trust governed by Mexican law to hold the Assets and the companies holding the Assets, with the Bank of New York Mellon, S.A. ("BONY") as trustee.

#### **Discussion**

5. As discussed in the Proposed Plan of Action By The Special Master, filed June 19, 2009 (the "Plan of Action"), the Special Master, with the assistance of Mayer Brown LLP ("Mayer Brown"), U.S. counsel to the Special Master, Jauregui, Navarrete y Nader S.C. ("JNN"), Mexican counsel to the Special Master, and Arias, Fabrega & Fabrega ("ARIFA"), Panamanian counsel to the Special Master, has determined that the optimal Legal Structure to hold the Assets and the companies holding the Assets would be an irrevocable administration

and guaranty trust governed by Mexican law (the “Restitution Trust”). The Special Master, with the assistance of Mayer Brown, JNN and ARIFA, has negotiated a draft of a trust agreement to establish the Restitution Trust (the “Trust Agreement”), which has been accepted by Grupo Kelly and BONY and attached hereto as Exhibit A.

6. Salient features of the Restitution Trust include:

- a) The Trustee will act only upon the instructions of the Special Master, as administrator of the Restitution Trust.
- b) The Special Master will have control of the shares of the companies owning the Assets (and certain operating companies) for purposes of liquidating such assets to make restitution.
- c) Upon obtaining the consent of [REDACTED], the Mexican government agency that is Grupo Kelly’s counterpart in developing [REDACTED], both (a) cash flow owing to [REDACTED], the Grupo Kelly entity involved in [REDACTED] (subject to any funds reserved to complete [REDACTED]) in accordance with the terms set forth in the Guarantee and Administration Trust among [REDACTED], [REDACTED], and [REDACTED] as Trustee (the “[REDACTED]”), as well as (b) the shares of [REDACTED], will also be held in the Restitution Trust.
- d) Upon correcting certain corporate irregularities in regard to the Panamanian Assets, the shares of such companies will also be held in the Restitution Trust.

- e) The Restitution Trust will contain a reserve fund, in an amount agreed by the Special Master, [REDACTED] and Grupo Kelly, that will ensure that funds necessary to complete [REDACTED] are reserved. This fund, which will be filled from [REDACTED]'s cash flow, may delay the distribution of cash to victims of the Kelly scheme but ultimately should benefit restitution efforts by assuring that [REDACTED] has adequate funds to be completed, thus maximizing the return from this Asset. [REDACTED], in a meeting with the Special Master, indicated that a reserve fund would be a prerequisite to its agreeing to the transfer of the shares of [REDACTED].
- f) The Special Master, as administrator under the Restitution Trust, may make provision for (and may pay) labor, vendor, tax and other claims that may arise in connection with any sale of assets (*e.g.*, severance costs for workers [REDACTED] if the buyer of [REDACTED] does not assume existing labor obligations) and that are required by Mexican law to be paid in connection with such sale.
- g) The sale of the Assets will occur pursuant to instructions given to the Trustee by the administrator, and the proceeds of any sale of Assets will be deposited into the accounts formed under the trust agreement (and not pass through any of the accounts independently held by a given Grupo Kelly company).

7. Upon Court approval of the Trust Agreement, the Special Master will use the Restitution Trust to take title, custody, control and possession of the Assets agreed to be a part of

the Restitution Fund (or the proceeds thereof), wherever located, for the benefit of the victims (and to pay the fees and expenses of the Special Master and his retained professionals); exercise control over the cash Assets of the Restitution Fund except to the extent the Special Master authorizes persons or entities operating any of the Assets to use such cash in the ordinary course of business in order to preserve, operate or increase the value of all Assets; operate any of the Assets in the ordinary course; and administer the Restitution Trust pursuant to the Plan of Action.

WHEREFORE, the Special Master respectfully requests that the Court enter an Order granting the relief requested herein and for such other and further relief as is just and equitable.

RESPECTFULLY SUBMITTED this **23rd day of June, 2009**.

/s/ Douglas A. Doetsch

Douglas A. Doetsch, Special Master

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Exhibit A

**EXHIBIT A FILED UNDER SEAL**

**Exhibit B**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

**ORDER AUTHORIZING THE SPECIAL MASTER TO CREATE A MEXICAN  
GUARANTY TRUST TO TAKE TITLE TO AND POSSESSION OF THE ASSETS IN  
THE RESTITUTION FUND**

Upon the motion, dated June 11, 2009 (the "Motion"),<sup>1</sup> of Douglas A. Doetsch, not individually but solely as the court-appointed Special Master in the United States of America v. Michael E. Kelly, by and through his attorneys, requests that this court enter an order authorizing the Special Master to create an irrevocable administration and guaranty trust governed by Mexican law to hold the Assets and the companies holding the Assets, through which the Assets in the Restitution Fund are to be held for the benefit of the victims (the "Restitution Trust"); and a hearing on the Motion having been held on June 15, 2009; and it appearing from the record before the Court (as defined herein) and after due deliberation that sufficient cause exists for the entry of this Order, the Court makes the following findings and enters its Order, all as set forth below:

1. The Special Master is hereby authorized to complete the formation of the Restitution Trust.

Dated: Chicago, Illinois  
\_\_\_\_\_, 2009

\_\_\_\_\_  
The Honorable Ronald A. Guzman  
United States District Judge

<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Motion.  
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