

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Case No. 06 CR 964
)	12 CR 875
vs.)	
)	Hon. Ronald A. Guzmán
MICHAEL E. KELLY)	
)	
Defendant.)	

**ORDER APPROVING
THIRD AND FINAL RESTITUTION FUND DISTRIBUTION**

The Special Master, Douglas A. Doetsch, by and through his counsel, having filed his *Motion and Memorandum for Third and Final Restitution Fund Distribution* (the “**Third Distribution Motion**”) moving this Court to approve a final Restitution Fund distribution, and this Court having held a hearing thereon, and the Court being otherwise fully advised in the premises,¹

IT IS ORDERED AND ADJUDGED as follows:

1. The Special Master and the Claims Processing Agent have taken all reasonable steps in conducting the First Distribution and the Second Distribution and have complied with the Court’s prior orders in conducting the First Distribution and the Second Distribution;
2. The claims of the 378 Unclaimed Victims from the Second Distribution listed on the Unclaimed Victim List, attached as Exhibit C to the Third Distribution Motion, have properly been stricken from the list of Victims eligible for the Third Restitution Fund Distribution, and the

¹ Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Claims Procedure Orders and the Third Distribution Motion.

amounts of their unclaimed Second Distribution checks (\$536,043.47) shall be added to the monies available for the Third Restitution Fund Distribution to the remaining Eligible Victims, in accordance with the terms of the Second Distribution Order;

3. The “**Third Distribution Eligible Victim List**,” attached as Exhibit F to the Third Distribution Motion and incorporated herein by reference, and the actions of the Claims Processing Agent in compiling the Third Distribution Eligible Victim List, are ratified, and the determinations of Total Restitution Amount (“**TRA**”) and the Third Distribution Amount for each approved Eligible Victim constitute final and binding determinations of TRA and Third Distribution Amount for each Eligible Victim, and each of them individually are hereby barred from asserting any claim in excess thereof against the Restitution Fund, the Special Master or Claims Processing Agent (either personally or in their representative capacities), or their employees, agents, attorneys and accountants;

4. All claims of individuals and/or entities not specifically listed as Eligible Victims on the Third Distribution Eligible Victim List, as well as all individuals and/or entities listed on the Unclaimed Victim List, attached as Exhibit C to the Third Distribution Motion and incorporated herein by reference, are hereby forever barred and may not be asserted against the Restitution Fund, the Special Master or Claims Processing Agent (either personally or in their representative capacities), or their employees, agents, attorneys and accountants;

5. The amount of \$1,727,698.55 be transferred from the Restitution Fund to Fifth Third Bank for deposit into the Distribution Account to fund a final distribution to the Third Distribution Eligible Victims;

6. The amount of \$2,250,000 be distributed out of the Distribution Account to the Third Distribution Eligible Victims in accordance with the Third Distribution Amounts set forth on the Third Distribution Eligible Victim List (Exhibit F to the Third Distribution Motion);

7. The amount of US \$20,000.00 shall be maintained in the Distribution Account to pay bank fees and costs of Positive Pay;

8. The Special Master is authorized and directed to hold back the amount of US \$843,798.92 in the Restitution Fund as a Contingency Reserve for the payment of accrued but unpaid expenses as of March 31, 2022, as well as future expenses to operate the estate, including the payment of future professional fees and costs, and to cover future, unknown contingencies, as detailed in the Third Distribution Motion;

9. (i) The Claims Processing Agent shall distribute the Third Distribution Amounts to the Third Distribution Eligible Victims as provided on the Third Distribution Eligible Victim List within ninety (90) calendar days after entry of this Order Approving Third Restitution Fund Distribution, and, further, (ii) the distribution shall be made to the Third Distribution Eligible Victims at each Victim's last known address contained in the records of the Claims Processing Agent and that the checks be mailed via United States First Class Mail; (iii) the burden is on the Third Distribution Eligible Victims to notify the Claims Processing Agent of a Third Distribution Eligible Victim's current address and other contact information, and of insuring that a Third Distribution Eligible Victim's name and/or proper contact information are contained in the Claims Processing Agent's records; (iv) the Claims Processing Agent is under no duty or obligation to attempt to determine current address and other contact information for any Third Distribution Eligible Victim; and (v) the Claims Processing Agent shall implement the security procedures of Positive Pay to ensure the proper negotiation of each Third Restitution Fund Distribution check;

10. The Final Distribution checks which are returned or which have not been cashed within one hundred twenty (120) calendar days from the date of mailing of such checks, will be void, the right to receive such payments will terminate, subject only to the sole discretion of the Special Master, and the amounts otherwise distributable to such Third Distribution Eligible Victims shall be returned to the Restitution Fund and disposed of according to the Court's further instructions; further, the Claims Processing Agent will, in the mailing of the Third Restitution Fund Distribution checks, warn Third Distribution Eligible Victims of this potential loss of rights and the need to promptly cash their checks by including a copy of the Third Distribution Letter, substantially in the form attached as Exhibit G to the Third Distribution Motion and incorporated herein by reference; and such Victims shall be removed from the list of Third Distribution Eligible Victims, and the Claims Processing Agent shall have no further duty to locate these Victims or notify these Victims of future hearings, motions, orders or developments in this case;

11. Because of the joint ownership of claims and in conjunction with the mailing of the Third Restitution Fund Distribution checks, the Claims Processing Agent shall mail via United States First Class Mail a copy of the Letter to Third Distribution Eligible Victims to each Co-Victim reflected in the Claims Processing Agent's records advising them of the named payee and the address to which the check was mailed, provided however, that failure of the Claims Processing Agent to mail the Letter to Co-Victim Claimants or failure of the Victims or Co-Victims to receive such letters, shall not give rise to any claim against the Claims Processing Agent, the Special Master or their employees, attorneys, accountants or agents, as the copy of this letter is meant to provide a courtesy notice and does not convey substantive rights to Victims or Co-Victims;

12. Because many Victims in this matter are deceased, and their heirs may encounter difficulty in negotiating Third Distribution checks that are made payable to the estate of the

decedent (“**Estate Checks**”), the Claims Processing Agent is hereby authorized to receive, review and analyze small estate affidavits, or other such similar small estate probate documents as authorized by state law (“**Small Estate Affidavits**”), as provided to the Claims Processing Agent by representatives of deceased victims’ estates. The Claims Processing Agent shall use its best efforts upon review of the Small Estate Affidavits to determine if such documentation satisfies the identified victim’s state requirements for reissuing the victim’s Third Distribution Check to the designated surviving spouse, child or other heir (“**Affiant**”) as identified in the Small Estate Affidavit, without further probate or other court involvement;

13. The Claims Processing Agent shall present to the United States Attorney’s Office (“**USAO**”) a list of all Small Estate Affidavits received that the Claims Processing Agent, in its professional opinion, has identified as satisfying the appropriate state requirements for reissuance of the Third Distribution Check to the identified Affiant. The Claims Processing Agent will also indicate whether or not, in its professional opinion, such documentation is sufficient for the Claims Processing Agent to send any additional, future court-approved distribution amounts from the restitution fund to the identified Affiant;

14. The USAO is authorized to approve the reissuance of the Third Distribution Checks to the identified Affiants as presented by the Claims Processing Agent, and to determine if such documentation is sufficient to include any additional future court-approved distributions from the restitution fund. No further Court approval is required;

15. Upon approval by the USAO, the Claims Processing Agent is authorized to reissue a victim’s Third Distribution Check in the name of the Affiant, to mail the reissued Third Distribution Check to the Affiant, via *United States First Class Mail* at the address provided by the Affiant, and further that: (i) the burden is on the Affiant to notify the Claims Processing Agent

of any updated contact information, and of insuring that the Affiant's name and/or proper contact information are contained in the Claims Processing Agent's records; (ii) the Claims Processing Agent is under no duty or obligation to attempt to determine the current address and/or other contact information for any Affiant; and (iii) the Claims Processing Agent shall implement the security procedures of positive pay;

16. The Claims Processing Agent will only reissue a Third Distribution Check if, in addition to the requirements described above: (i) the Third Distribution Check was made payable to a deceased victim or a deceased victim's estate, and (ii) the Third Distribution Check has not been cashed or negotiated;

17. The Third Restitution Fund Distribution checks which are returned or which have not been cashed within one hundred twenty (120) calendar days from the date of mailing of such checks, will be void, the right to receive such payments will terminate, subject only to the sole discretion of the Special Master, and the amounts otherwise distributable to such Third Distribution Eligible Victims shall be returned to the Restitution Fund and disposed of according to the Court's further instructions; and that the Claims Processing Agent will, in the mailing of the Third Restitution Fund Distribution checks, warn Third Distribution Eligible Victims of this potential loss of rights and the need to promptly cash their checks by including a copy of the Third Distribution Letter, substantially in the form attached as Exhibit G to the Third Distribution Motion and incorporated herein by reference; and further ordering that such Victims shall be removed from the list of Third Distribution Eligible Victims, and that the Claims Processing Agent shall have no further duty to locate these Victims or notify these Victims of future hearings, motions, orders or developments in this case;

18. In order to effectuate the distribution of the Third Distribution Amount and all subsequent distributions, if any, the Court releases and discharges the United States of America, its agents, servants and employees, the Special Master and the Claims Processing Agent (both in their personal and representative capacities) and their respective attorneys, accountants, employees, officers, directors and agents and all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing and distribution of checks and determination of claims filed pursuant to the Claims Procedure or otherwise involved in the administration of the estate, from any act or omission arising out of such involvement in all prior, current and future distributions, if any;

19. The Kelly Restitution Fund shall indemnify, defend and hold harmless the United States of America, its agents, servants and employees, the Special Master and the Claims Processing Agent (both in their personal and representative capacities) and their respective attorneys, accountants, employees, officers, directors and agents and all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing and distribution of checks and determination of claims filed pursuant to the Claims Procedure and the processing, issuance, reissuance of Estate Checks to any Affiant based on their reliance on the Small Estate Affidavits, or otherwise involved in the administration of the estate (the “**Indemnified Parties**”), from and against all actions pending or threatened, whether at law or in equity, in any forum, from liabilities, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys’ and other professionals’ fees and costs, arising from conduct or omission of the Indemnified Parties in connection with this case;

20. The Third Distribution Motion and this Order, including all exhibits, shall be available to the public at the Clerk of the Court for the United States District Court for the

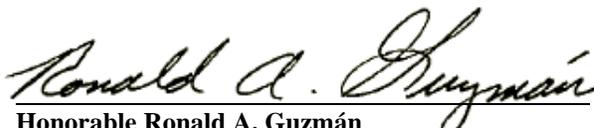
Northern District of Illinois (Eastern Division) for inspection and copying at such Court Clerk's offices during normal business hours by any interested party who wishes to examine the same; provided that the Court Clerk shall provide a copy of the Third Distribution Motion and this Order to any person requesting the same at such person's cost, subject to such Court Clerk's normal practices, procedures and requirements concerning same; and the Claims Processing Agent is further directed to post a copy of the Third Distribution Motion and this Order, with all exhibits attached, on the Claims Processing Agent's website at <http://www.stengerlaw.com/practice-areas/receivership/open-receiverships/michael-e-kelly/>; and

21. The Special Master shall remain in his position until the end of 2022 or such earlier time when, in his judgment, the remaining contingencies have been resolved, which such role of the Special Master after the Third Restitution Fund Distribution shall be limited to resolving such contingencies and the Special Master shall not pursue the recovery of further assets for addition to the Restitution Fund.

DATE: May 11, 2022

IT IS SO ORDERED.

ENTER:


Honorable Ronald A. Guzmán
United States District Judge