

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)

**GOVERNMENT'S SUBMISSION OF COMMENTS RECEIVED
CONCERNING PROPOSED SALE OF *PUERTO CANCUN* ASSET**

Now comes the United States of America, by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, and pursuant to the court's order of May 2, 2011 in connection with the proposed sale of the *Puerto Cancun* asset, herewith submits four communications received by the United States Attorney's Office.

The government notes that the attached are communications from Universal Lease leaseholders received since May 2, 2011 and have been redacted pursuant to Fed.R.Crim.P. 49.1. Although not all communications appear specifically addressed to the proposed sale of *Puerto Cancun*, we nonetheless submit them to the court. One additional document, a communication dated April 27, 2011 authored by Ernest Bustos and addressed to lease holders, is also attached.

Respectfully submitted

PATRICK J. FITZGERALD
United States Attorney

By: s/ Daniel W. Gillogly
DANIEL W. GILLOGLY
Assistant United States Attorney
219 S. Dearborn Street, 5th Floor
Chicago, Illinois 60604
(312) 886-1328

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that the following document:

**GOVERNMENT'S SUBMISSION OF COMMENTS RECEIVED
CONCERNING PROPOSED SALE OF PUERTO CANCUN ASSET**

was served on May 16, 2011 on:

Jeffrey B. Steinback
53 W. Jackson Blvd.
Suite 1454
Chicago, Il. 60604

Douglas A. Doetsch
Mayer Brown LLP
71 S. Wacker Drive
Chicago, Illinois 60606

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: /s/ Daniel W. Gillogly
DANIEL W. GILLOGLY
Assistant United States Attorney
United States Attorney's Office
219 South Dearborn Street
Chicago, Illinois 60604
(312) 886-1328

From: [REDACTED]
Sent: Tuesday, April 26, 2011 3:51:25 PM
To: USAILN-Victim.MK (USAILN)
Subject: U.S. vs M. E. Kelly - Case #2005R00908 Auto forwarded by a Rule

Mr. Jack E. Throop [REDACTED]
[REDACTED]

April 26, 2011

Clerk of the Court
US Court House
20th Floor
219 South Dearborn Street
Chicago, IL 60604

To the Honorable Judge Guzman:

As a victim in the Michael E. Kelly Case (No. 2005R00908), living on retirement savings and Social Security, I find that the system of justice is extremely slow. A significant portion of our retirement savings are frozen, and the lawyers who are supposed to be getting that money returned to the victims are paying themselves quite well. Nearly six years have passed and not one cent has been returned to the victims and no schedule has been created to project when we might expect to receive some of our investment back. As seniors we need these funds because this investment was made to support our retirement.

I would also like to point out that the Special Master does not appear to be expediting and maximizing the return from the sale of the properties. I would ask that the Court appoint an oversight committee to monitor these areas of concern to all of the investors.

I would like to ask that the court implement a plan for maximizing return of restitution funds and for timely incremental payments with the restitution funds as they are collected, with the amount of these payments, based on the pro rata amount of each victim's losses; as outlined to us by Stenger & Stenger. And, to publish a schedule of projected payment dates in the future - before we are all deceased.

Sincerely,

Jack E. Throop

From: Randal Terwedo [REDACTED]
Sent: Wednesday, May 04, 2011 2:19:57 PM
To: USAILN-Victim.MK (USAILN)
Subject: Port of Cancun
Auto forwarded by a Rule

Hello:

I need a clarification regarding the sale. If the property is sold, do I loose the condo I have purchased and am waiting to close on or do I retain it. I was asked to submit my paperwork to show I paid for a unit in BellsVista towers, [REDACTED] I am waiting on the closing. I am working with Mr. Bracomotes.

Thank You

Randy Terwedo

ALTA H. COX
[REDACTED]
[REDACTED]

[REDACTED]

May 12, 2011

Victim & Witness Unit
United States Attorney's Office
219 S. Dearborn Street, 5th Floor
Chicago, Illinois 60604

Re: Case No. 2005R00908 & Court Docket No. 06-CR-00964

Dear Judge Guzman:

This letter is in response to the proposed sale of Puerto Cancun outlined in the May 4, 2011 notification by the U.S. Department of Justice.

I would like to know exactly how much property is involved in this sale. Is it all of the Puerto Cancun development? Is that where the Bella Vista condos are located and are they included or are they separate? What about future condo sale proceeds from Bella Vista?

At one time this Puerto Cancun project was worth close to a billion dollars. What happened to it all? Does the Mexican government own part of it? I have been hopeful all along that Puerto Cancun would be the property that would pay us back all of our investment.

Also, are all the hotels in Cancun up for sale?

I am very anxious to realize the return of my money. I am paying an annual fee of \$180 to the trust company, Provident Trust Group, for the management of my IRA account. If we are not to receive a 100% of our money back it would be nice to have these IRA accounts re-valued so that we could declare the true value, take the tax hit, and close out the trust accounts to stop paying these annual fees.

Thank you for your consideration.

Alta H. Cox
Alta H. Cox

IP FUND 1

Dear Lease Holder,

April 27, 2011

There are some developments in Kelly's case. As a recap of our last update we stated we did not believe all the assets have been included in the Restitution Trust, which would explain why you are asked to waive your rights. To remind you, the FBI agent who investigated Kelly made it known Kelly's Port Of Cancun alone had a potential of 1 billion dollars in profits, more than enough to make the leaseholders whole without the hotels and other assets. The FBI agent was not alone, others stated the same to the court. We stated the SM doesn't represent the leaseholders, he is standing in Kelly's shoes. Now we can tell you the United States Attorney Office's (USAO) prosecutor does not represent the victims, it represents "The People". What does this mean? It means that "The People" is the government and the main focus of the government's case is against the defendant Kelly; it is not the recovery of the victim's losses. So it could be said that the Special Master represents Kelly, the USAO represents the United States ("The People") and the victims are left outside looking in. In reviewing victim's rights this was the norm until 2004 when Congress passed the Crime Victims' Rights Act (CVRA), giving victims some rights to participate in the federal criminal justice system. With this statute, Congress transformed federal criminal prosecutions. We used the Crime Victims' Rights Act to protect all of the leaseholder rights. The SM would have taken those rights and barred claims against any transferee of or successor in interest to any asset or any third party beneficiary of any asset owned by or affiliated with Grupo Kelly and others. This forced the trial judge to direct two revisions to the victims claim process to avoid the obvious overreaching by the Special Master and the complicit disingenuous reporting by DOJ. This only occurred after the Leaseholders pointed it out and only after three separate filings. You may be thinking I just want my money, why is this important? It's not as simple as "I just want my money"! What the leaseholders are facing is an adversary system that has formed the constitutional, procedural, and ethical rights and obligations of the system's three primary participants: courts, prosecutors, and defendants, victims have not been considered a party and there is the problem. Because an adversary system relies on the parties to assert their interests before the court, it excludes outsiders like crime victims. With the passing of the CVRA this should have changed but courts, prosecutors, and defendants are resisting the change and still see the victims as a non-party. Victims have rights and unless they enforce their rights and raise a united voice they have little or no chance of asserting their rights! In March 2011 two Advisories to the court were filed informing the Court that after a careful review of the Ninth Status Report, it was clear the Court's concern was now in full view. During the court's hearing of the appointment of the Special Master, and in response to the leaseholders' concern over restitution, the court stated that even though history shows in these types of cases the attorneys make millions while the victims recover pennies and that there was no guarantee this would not happen. The court told the Special Master this case should not be treated as a commercial case. However, there is positively no evidence the Special Master followed the court's instructions. The Special Master gives the appearance of abetting Kelly in his scheme by raising Kelly Jr., Grupo Kelly, and other bogus companies and their agreements to a level of legitimacy. The Special Master claims foreign laws are controlling to justify these bogus companies' agreements, while attempting to deny the management agreements entered into by the leaseholders. This denies the leaseholders rental income even though the leases were registered as timeshares with PROCURADURIA FEDERAL DEL CONSUMIDOR (PROFECO), which protects foreign investors and should waive any Mexican tax on proceeds unless there is a profit. The Special Master fails to expose Kelly and his conspirators in the

Mexico and Panama fraud, he fails to pursue all assets and money from Kelly's scheme, he fails to add them to the Restitution Trust claiming some of these assets may not be appropriate and supporting payment to Kelly's co-conspirators under bogus employment agreements. He also fails to expose that the sale of assets are because of fraud, which may eliminate the Mexican taxes. The advisory also pointed to fees being paid. The Court Ordered the USAO to respond to the advisories and the USAO in its response reveals for the first time all the assets will not be included in the Restitution Trust. The USAO and the Special Master are taking a position that is absolutely adverse to the interest of the victims by touting that Kelly and his family properly formed business under Mexican and Panamanian laws allowing Kelly to keep millions of dollars from the sale of Puerto Cancun and excludes an unknown amount of assets out of the Restitution Trust. The USAO and the Special Master has lost touch with what is in the collective best interests of the victims in favor of assuring Kelly and his family's wealth and payment to the Special Master, his hand picked professionals and taxes to the Mexican Government. Therefore, by claiming Kelly and his family properly formed businesses under Mexican and Panamanian laws, the USAO guarantees millions in abusive legal fees, the payment of Mexican taxes and Kelly and his family a slap on hand leaving the victim with pennies. It is incontrovertible that the United States Attorneys Office does not represent the victims, even though many victims have been led to believe they do. Just because these businesses were formed properly under foreign laws, says nothing to where the money came from. Kelly laundered leaseholder money directly or indirectly to form these companies. Kelly took leaseholder money to form companies and then took the revenue from the companies and from other companies and repeated it over again and again until it looked like money was obtained from legal sources. The Special Master, the SEC and the USAO are aware or should be aware of this and their stance is nothing more than willful blindness to Kelly's money laundering of which they have decided to suppress their knowledge. In short, all the assets and money are poison fruit from the poison tree and Kelly, his family members and other coconspirators should not be allowed keep them. The USOA failed to use Mutual Legal Assistance Treaties, (MLATs). In using this Treaty Mexico must provide assistance at all stages of U.S. criminal investigations and prosecutions, including grand jury proceedings. We are now asking the court to remove some of the Special Master's unneeded professionals and allow leaseholders the opportunity for meaningful discussions to address or to oppose issues before the court, which affect the victims' full restitution, to allow Resort Management Group, made up of leaseholders, the opportunity to participate in the restitution phase and have a voice on how their money is being spent, unseal all documents for a full review. This will give us what we need if we have to appeal to a higher court.

Even though there are no guarantees in any legal action, I am sure you would agree that if the Fund had not helped the leaseholders to continue to contest the Special Master's proposals, the leaseholders would be done for today. We continue to believe the Fund is the best way for leaseholders to protect their rights and pursue recovery of money not paid to them civilly. The cost of your membership is less than \$9 per month and we cannot continue without your support.

[REDACTED] We are requesting \$100 for your membership fee for 2011. Make your check payable to: IP Fund1 and send to 2163 Encino Loop, San Antonio, TX 78259. Please register for emails at erblassoc2@aol.com

Very truly yours,
Ernest Bustos