



diGENOVA & TOENSING, LLP
ATTORNEYS-AT-LAW

June 13, 2008

Via Facsimile (954/926-5112)
and First Class Mail

██████████
National President
American Maritime Officers Union
2 West Dixie Highway
Dania, Florida 33004-4312

RE: Expense audits for McKays and Thomas Kelly

Dear President ██████████

Subsequent to the guilty plea of Thomas Kelly and the convictions of Michael and Robert McKay on January 5, 2007, the AMO National Executive Board adopted a resolution directing my firm to retain former FBI Supervisory Special Agent Dan Anderson to perform expense audits of the McKays and Kelly. This letter responds to your request for a status update of those three audits.

The Union received a letter dated December 29, 2006 from Union member ██████████. That letter requested that the Union take action against Michael and Robert McKay pursuant to 29 U.S.C. § 501(b) based on a pending indictment against them in the United States District Court for the Southern District of Florida in case no. 05-60149-CR-COHN.

At the time the December 29 letter was written, Michael and Robert McKay were still on trial. However, on Friday afternoon, January 5, 2007, the jury found the McKays guilty of multiple counts, including RICO and embezzlement. On Monday morning, January 8, 2007, Michael McKay resigned and Robert McKay's consulting position with the Union was terminated. The McKays were also precluded from visiting the Union premises.

As a result of the January 5 guilty verdicts and partly in response to the ██████████ letter, the AMO National Executive Board adopted a resolution on January 10, 2007 directing our firm and AMO General Counsel Joel Glanstein to investigate and advise it

[REDACTED]
National President

June 13, 2008

Page 2

as to appropriate action (including possible lawsuits pursuant to 29 U.S.C. § 501(b)) to be taken against the McKays and Thomas Kelly.

In response to the Board's directive, AMO Special Counsel contacted and provided information to the government to assist its preparation for the McKays' sentencings. The Department of Justice's trial attorney in the criminal case informed counsel that the embezzlement alleged against the McKays during the trial totaled less than \$100,000. The government also assured counsel on a number of occasions that it would seek from the McKays the maximum possible restitution permitted under the law for their criminal conduct.

The McKays were sentenced on March 29, 2007 and were ordered to pay \$98,410.39 in restitution to the Union and together more than \$2 million in criminal forfeiture. Under the law, the restitution order is treated like a tax lien. It is not dischargeable in bankruptcy and is superior to a civil judgment and criminal forfeiture. The government is obligated to pay the Union restitution before it can claim any moneys obtained under forfeiture. These moneys are, however, not collectible until the McKays have exhausted their criminal appeals, which have been filed in the United States Court of Appeals for the Eleventh Circuit Court. Those appeals were fully briefed as of April 2, 2008 and are awaiting a date for oral argument.

During the spring of 2007, the Union's National Executive Board decided not to pursue civil litigation at that time to collect the money that was already subject to a criminal restitution order. Such litigation would have cost the Union legal fees and resulted in a judgment that was inferior to the restitution order the Union already possessed. The Board did, however, direct Special Counsel to attempt to secure an accounting of any additional possible embezzlement by the McKays and Kelly. In response to that request, Special Counsel retained former Supervisory Special Agent Dan Anderson to perform those audits.

Mr. Anderson was an internal inspector for the FBI and also has extensive experience conducting Union investigations. He served for two years as an investigator for the court appointed independent monitor of the Hotel Employees and Restaurant Employees International Union. He also served as an investigator for the United States House of Representatives Teamsters Investigation.

Mr. Anderson's analysis had two aims. The first aim was to obtain an accounting of possible embezzlement by the McKays and Kelly pursuant to 29 U.S.C. § 501(b). Second, the Union's controller was directed to make claims with the Union's bonding company based on Kelly's plea and the McKays' guilty verdicts. Any embezzlement identified by Mr. Anderson was to be used to support these claims.

All three audits covered the period 1995 to mid-2004 and were limited to a review of the expense reports vouchers submitted by the McKays and Kelly. These vouchers, which had been turned over to the government during its investigation (which started in July 2000 but did not conclude until September 2005), were sent to Mr. Anderson for his review. Mr. Anderson also had access to certain trial transcripts and was given access to Union employees to assist him in his audits. The summaries of these audits are as follows:

- **Michael McKay Expense Audit.** This audit was completed on April 24, 2008 and found that Michael McKay had embezzled a total of \$64,639.05 from April 1996 to February 2002 due to expense report fraud. This amount is in addition to the \$98,410.39 in criminal restitution Michael McKay was ordered to pay from his criminal trial.
- **Robert McKay Expense Audit.** This audit was completed on January 15, 2008 and found that Robert McKay had embezzled a total of \$91,539.06 from 1995 to 2004 due to expense report fraud. This amount includes the \$4,496.15 Robert McKay was found to have embezzled from the Union during his criminal trial.
- **Thomas Kelly Expense Audit.** This audit was completed on May 14, 2008 and found that Thomas Kelly had embezzled a total of \$179,107.26 from 1995 to 2001 due to expense report fraud. This amount includes the \$34,500.00 Kelly was found to have embezzled as part of his guilty plea.

Once completed the Union immediately posted all three audit reports on its website so that they were accessible to its members. Exhibit A attached to this letter provides an accounting of court ordered restitution, additional union findings of loss from the audits, and the pay status of the claims. To date, the Union has collected \$34,500.00, which is the court ordered restitution from Thomas Kelly.

In filing the Union's claims with the bonding company for the McKays and Thomas Kelly, the AMO Controller also alerted it that the audits might result in additional claims of loss. After receiving the audit reports, those additional claims of loss (totaling \$296,289.22) were submitted to the bonding company along with the audit reports and supporting documentation. There remains a total \$360,199.61 in calculated losses from both the criminal convictions and the expense audits. Claims for this amount are currently filed with the bonding company, which sent the audits and related documents to a forensic auditor. We are awaiting their response.

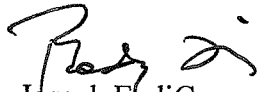
[REDACTED]
National President

June 13, 2008

Page 4

Special Counsel has worked in consultation with the Union's General Counsel regarding this matter and will notify you as soon as we hear a response from the bonding company. Please let us know if you have additional questions or concerns.

Sincerely,



Joseph E. diGenova

Brady Toensing

Special Counsel to the AMO

cc: Joel Glanstein, General Counsel, AMO (*Via Email*)

Exhibit A: AMO Union Loss Chart

	Court Ordered Restitution	Additional Union Findings of loss	Paid	Total Claim
Michael McKay	\$59,414.24	\$64,639.05	\$0.00	\$124,053.29
Robert McKay	\$4,496.15	\$87,042.91	\$0.00	\$91,539.06
Tom Kelly	\$34,500.00	\$144,607.26 ¹	(\$34,500.00)	\$144,607.26
Total	\$98,410.39	\$296,289.22	(\$34,500.00)	\$360,199.61

¹ The Union Findings as a result of its audit totaled \$179, 107.26 and included the \$34,500 in court ordered restitution. Therefore, the original total Union Findings on this chart were reduced by \$34,500 to prevent double counting that amount.