

Transferring Forfeited Assets to Victims Through Remission, Restoration, and Restitution

Alice W. Dery

*Chief, Program Management and Training Unit
Money Laundering and Asset Recovery Section*

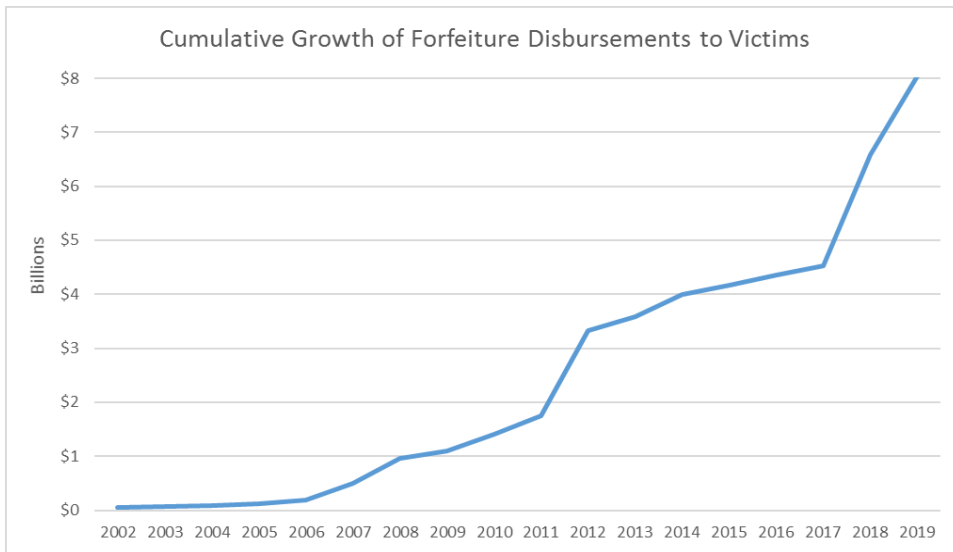
Jennifer Bickford

*Deputy Chief, Program Management and Training Unit
Money Laundering and Asset Recovery Section*

I. Introduction

As Congress has expanded the number of crimes for which forfeiture is available or mandated, forfeiture has become the principal tool by which the government recovers criminal proceeds, facilitating property, and the instrumentalities of crime and returns these assets to victims of crime. From 2002 to the present, the government transferred more than \$8 billion to victims.¹ The graph below shows the growth of forfeiture disbursements to victims over that period.

¹ See, e.g., [Press Release, U.S. Dep't of Justice, Department of Justice Compensates Victims of Bernard Madoff Fraud Scheme with Funds Recovered Through Asset Forfeiture \(Nov. 9, 2017\)](#); [Press Release, U.S. Dep't of Justice, Department of Justice Begins Second Distribution of Funds Recovered Through Asset Forfeiture Totaling \\$1.2 Billion to Compensate Victims of Bernard Madoff Fraud Scheme \(Apr. 12, 2018\)](#); [Press Release, U.S. Dep't of Justice, Department of Justice Begins Third Distribution of Funds Recovered Through Asset Forfeiture to Compensate Victims of Bernard Madoff Fraud Scheme \(Nov. 29, 2018\)](#); [Press Release, U.S. Dep't of Justice, Department of Justice Begins Fourth Distribution of Funds Recovered Through Asset Forfeiture to Compensate Victims of Bernard Madoff Fraud Scheme \(July 31, 2019\)](#).



Growth of forfeiture disbursements 2002 to present

Returning forfeited funds to victims has been a key part of the Department of Justice’s (Department) Asset Forfeiture Program. The revised 2018 *Attorney General Guidelines on the Asset Forfeiture Program* states that one of the primary goals of the forfeiture program is to “recover[] assets that may be used to compensate victims,” and “[w]henever possible, prosecutors should use asset forfeiture to recover assets to return to victims of crime”² Further, all Department employees are required to “make their best efforts to see that crime victims are notified of, and accorded, the rights described in” the Crime Victims’ Right Act,³ which includes the “right to full and timely restitution as provided in law.”⁴

Forfeiture has played a critical role in assisting victims in several recent high-profile financial fraud cases. For example, in the Bernard Madoff securities fraud case, the government seized and forfeited more than \$4 billion from Madoff and others and is currently

² DEP’T OF JUSTICE, OFFICE OF THE ATTORNEY GEN., ATTORNEY GENERAL’S GUIDELINES ON THE ASSET FORFEITURE PROGRAM Part V. D (2018).

³ 18 U.S.C. § 3771(c)(1).

⁴ DEP’T OF JUSTICE, OFFICE OF THE JUSTICE PROGRAMS, OFFICE FOR VICTIMS OF CRIMES, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE Art. V.H. (2011 ed., rev. May 2012) (citing 18 U.S.C. § 3771(a)(6)).

remitting the funds to approximately 40,000 of Madoff's investor-victims.⁵ The Department anticipates that when it completes the *Madoff* remission, his victims will recover more than 65% of their losses. The victims' appreciation for the government's assistance is reflected in messages like the following received from one of the *Madoff* victims:

Your commitment to righting this horrific injustice makes me have faith again in our judicial system and humanity. I'd love nothing more than to thank each and every one of you in person. Please know you are making an enormous difference in so many people's lives.⁶

In addition to *Madoff*, the Money Laundering and Asset Recovery Section (MLARS) has coordinated several other recent significant victim recoveries, including:

- The government civilly forfeited \$586 million paid by Western Union Company for its role in a facilitating a fraud scheme involving persons posing as victims' family members needing assistance or promising prizes or job opportunities. In the scheme, victims were directed to send money through Western Union to purportedly help their relative or claim their prize. The government is currently evaluating petitions received from over 180,000 victims in advance of distributing funds. (U.S. Attorney's Office (USAO) for the Middle District of Pennsylvania).⁷
- David H. Brooks, the now-deceased founder of a company that supplied body armor to the U.S. military and law enforcement agencies, forfeited more than \$143 million as a result of his accounting fraud and manipulation of the company's stock prices. The government distributed these funds to thousands of

⁵ See, e.g., *United States v. \$7,206,157,717 on Deposit at JPMorgan Chase Bank, N.A., in the Accounts Set Forth on Schedule A*, 1:10-cv-09398 (S.D.N.Y. 2010); *United States v. \$1,700,000,000 in United States Currency*, 1:14-cv-00063 (S.D.N.Y. 2014).

⁶ See *Notes to MVF*, MADOFF VICTIM FUND, www.madoffvictimfund.com (last visited July 22, 2019).

⁷ See [Press Release, U.S. Dep't of Justice, Western Union Admits Anti-Money Laundering and Consumer Fraud Violations, Forfeits \\$586 Million in Settlement with Justice Department and Federal Trade Commission \(Jan. 19, 2017\)](#).

Brooks' investor-victims. (USAO for the Eastern District of New York).⁸

- AMG Services, a payday lender, conducted a scheme involving false disclosures and unauthorized fees to customers. The government obtained agreements for the civil forfeiture of more than \$500 million from U.S. Bank and two tribal organizations. The forfeited funds were included in a \$505 million distribution made by the Federal Trade Commission. (USAO for the Southern District of New York).⁹
- The government recently made remission payments totaling nearly \$17 million to 364 victims of a Ponzi scheme perpetrated by Thomas J. Petters. (USAO for the District of Minnesota).¹⁰

The government returns seized or forfeited funds to victims through three avenues: remission, restoration, and restitution. *Remission* occurs when the Attorney General exercises discretion to transfer forfeited funds to victims of the crime underlying the forfeiture. *Restoration* occurs when the Attorney General authorizes the transmittal of forfeited funds to a criminal court to be applied towards satisfaction of the defendant's restitution order. *Restitution* is when a court orders a criminal defendant to compensate the victim for losses caused by the defendant's crime; at times this is satisfied with forfeited funds.

II. Forfeiture and restitution: mandatory for most federal crimes

For most federal crimes, Congress has mandated that courts order forfeiture of any property involved in or traceable to the offense.¹¹

⁸ See [Press Release, U.S. Dep't of Justice, Government Forfeits More Than \\$143 Million in Fraud Proceeds Seized from David H. Brooks \(Nov. 5, 2018\)](#).

⁹ See [Press Release, Fed. Trade Comm'n, FTC and DOJ Return a Record \\$505 Million to Consumers Harmed by Massive Payday Lending Scheme \(Sept. 27, 2018\)](#).

¹⁰ See [Press Release, U.S. Dep't of Justice, Victims of Tom Petters Ponzi Scheme Receive Initial Distribution Of More Than \\$16 Million In Forfeited Funds \(Aug. 13, 2018\)](#).

¹¹ 18 U.S.C. § 982(a)(1) (The court "shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.") (emphasis added); see also 28 U.S.C. § 2461(c) ("If the defendant is convicted of the offense giving rise to

Similarly, the Mandatory Victims Restitution Act of 1996 (MVRA) requires the sentencing court to order restitution for property crimes in which an identifiable victim has incurred a pecuniary loss.¹² While the MVRA provides prosecutors with powers to attach a defendant's assets for payment of restitution after conviction, by that time it is often too late because the defendant may have dissipated or hidden assets prior to conviction. Forfeiture statutes provide strong pretrial asset preservation tools that augment the restitution process and ensure that ill-gotten assets are preserved for victims.

In addition to facilitating recovery for victims, principal goals of forfeiture include depriving criminals of the proceeds of crime and promoting cooperation among federal, state, local, tribal, and foreign law enforcement agencies.¹³ Restitution, on the other hand, is intended to compensate victims for losses incurred as a result of the underlying crime. While forfeiture and restitution serve distinct purposes, these purposes converge in cases involving victims.

III. Petitions for remission

The Attorney General (acting through MLARS), or the seizing agency, may exercise discretion to remit forfeited funds to persons who have incurred a pecuniary loss directly caused by the offense underlying the forfeiture, or a related offense.¹⁴ A “related offense” includes an offense committed “as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which forfeiture was ordered.”¹⁵

the forfeiture, the court *shall order* the forfeiture of the property as part of the sentence in the criminal case.”) (emphasis added);

[United States v. Newman](#), 659 F.3d 1235, 1240 (9th Cir. 2011) (“The mandatory nature of that phrase [‘shall order’ in the criminal forfeiture statutes] is clear: When the government has met the requirements for criminal forfeiture, the district court must impose criminal forfeiture, subject only to statutory and constitutional limits.”).

¹² 18 U.S.C. § 3663A(a)(1), (b)(1).

¹³ [DEPT OF JUSTICE, OFFICE OF THE ATTORNEY GEN., ATTORNEY GENERAL’S GUIDELINES ON THE ASSET FORFEITURE PROGRAM Part II \(2018\)](#).

¹⁴ 28 C.F.R. §§ 9.2, 9.8(b)(1).

¹⁵ 28 C.F.R. § 9.2.

A. Eligible persons

A “person” eligible for remission may be an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property. In addition, a federal, state, or local governmental agency may be eligible for remission.

A person cannot qualify for remission if he or she:

- Knowingly contributed to or benefited from the offense underlying the forfeiture or was willfully blind to it;
- Has been compensated or has recourse to other reasonably available assets or compensation (for example, litigation or insurance); or
- Seeks recovery for torts that are associated with the offense but are not the bases for the forfeiture.¹⁶

B. Eligible losses

The amount of a victim’s eligible pecuniary loss is limited to the fair market value of the property as of the date of the occurrence of the loss.¹⁷ The most common types of compensable losses arise from Ponzi schemes, telemarketing scams, investment fraud, and the like, in which the victim gives money voluntarily to the perpetrator in the expectation of receiving a return. Other kinds of eligible losses may arise from embezzlement, theft, and crimes of false pretenses, such as fraudulent loan applications. Less obvious types of compensable losses may include unreimbursed expenses incurred by a victim for counseling and other forms of medical treatment that arise directly from the criminal offense.

The following types of non-pecuniary losses are not generally eligible for remission:¹⁸

- Losses not directly resulting from the underlying offense or a related offense (for example, lost wages from missed work)
- Interest forgone (for example, fraudulent proceeds promised in an investment scheme)
- Collateral expenses incurred to recover lost property (for example, attorney’s fees or investigative expenses)

¹⁶ 28 C.F.R. § 9.8(b), (c).

¹⁷ 28 C.F.R. § 9.8(c).

¹⁸ See 28 C.F.R. § 9.8(b)(1), (c).

- Physical injuries or damage to property
- Pain and suffering

A successful petition requires documentary evidence of a pecuniary loss. Acceptable evidence includes cancelled checks, receipts, bank statements, and invoices.¹⁹ Losses may also be substantiated through records seized from the perpetrator. In calculating a victim's pecuniary loss, any money previously returned to, or recovered by, the victim must be subtracted from the loss amount. A victim need not show that his or her specific funds are among the funds forfeited in order to establish eligibility. All funds and property forfeited in a case, less government expenses, are generally available to compensate eligible victims on a pro rata basis.

C. The remission process

To seek remission, a victim must complete a petition for remission and submit it to the U.S. Attorney for the judicial district where the forfeiture was completed, or to the seizing agency in an administrative forfeiture.²⁰ The Department's public website provides a sample petition and instructions for completing and filing a petition online.²¹ Following the seizure or forfeiture of property, the government may notify known potential victims in writing via postal or electronic mail of the opportunity to request remission. Unidentified or unknown victims may receive general publication notice through traditional media or the internet.²²

The seizing agency is responsible for adjudicating petitions for assets forfeited administratively. In judicial forfeitures, the Chief of MLARS or her designee is responsible for adjudicating petitions.²³ If a remission petition is denied, the petitioner may request reconsideration from MLARS or the seizing agency within 10 days of receipt of the denial notification.²⁴ A request for reconsideration must present evidence not previously submitted, or must demonstrate a

¹⁹ 28 C.F.R. § 9.8(b)(1).

²⁰ 28 C.F.R. § 9.4(e).

²¹ See *Petitions*, FORFEITURE.GOV, <https://www.forfeiture.gov/FilingPetition.htm> (last visited July 22, 2019).

²² See, e.g., *Public Notices of Forfeiture*, FORFEITURE.GOV, <https://www.forfeiture.gov/Default.htm> (last visited July 22, 2019).

²³ 28 C.F.R. §§ 9.4(g), 9.1(b)(3).

²⁴ 28 C.F.R. § 9.4(k).

clear basis to conclude that the original denial was erroneous. Reconsideration requests are decided by an official different from the one who decided the original petition.

In multiple-victim cases, forfeited funds are usually insufficient to fully compensate all eligible victims. In such cases, the funds are generally distributed to the victims on a pro rata basis in accordance with the amount of loss suffered by each victim.²⁵ The ruling official, however, has discretion to give priority to particular victims in appropriate circumstances.²⁶ For example, victims who have incurred extreme financial hardship as a result of the underlying offense may be compensated ahead of victims who experienced lesser degrees of harm. Victims always receive priority claim to forfeiture proceeds over requests for equitable sharing, official use, and other law enforcement purposes.²⁷ Only if all eligible victims associated with a forfeiture have been fully compensated may any surplus proceeds be shared with federal, state, local, or tribal law enforcement agencies.²⁸

IV. Restoration

A USAO, in its sole discretion, may request that MLARS apply forfeited funds towards satisfaction of a criminal restitution order through a process called “restoration.” After consultation with the seizing agency, the USAO must certify to MLARS that the victim or victims listed in the restitution order (1) are the only known victims of the offense underlying the forfeiture; (2) suffered a specific monetary loss directly attributable to the crime; (3) have no reasonable access to other sources of recovery; and (4) were not complicit in the offense or willfully blind to it.²⁹ To qualify for restoration, the restitution order must include all known victims, and the victims must generally satisfy the remission eligibility requirements.³⁰

²⁵ 28 C.F.R. § 9.8(f).

²⁶ *Id.*

²⁷ DEPT OF JUSTICE, OFFICE OF THE ATTORNEY GEN., ATTORNEY GENERAL’S GUIDELINES ON THE ASSET FORFEITURE PROGRAM Sec. V.G. (2018).

²⁸ The government’s administrative expenses incident to the forfeiture, sale, or other disposition of the property are deducted before making any amount available for any use, including victim compensation. 28 C.F.R. § 9.9(a). Typically, government expenses represent a small fraction of the total forfeiture proceeds.

²⁹ ASSET FORFEITURE POLICY MANUAL (2019), Chap.14, Sec.2.B.3.

³⁰ See *Id.* at Sec.2.B.2–B.3.

Cases involving human trafficking have special provisions concerning disposition of forfeited funds. Congress has directed that all property forfeited under 18 U.S.C. § 1594 (human trafficking) *shall* be used to pay any restitution ordered in the criminal case.³¹ Thus, MLARS will process restoration requests in such cases regardless of whether the victims' losses meet the regulatory requirements for remission. If no restitution order exists in a human trafficking case, MLARS will consider a petition for remission that seeks, for example, lost wages as the victim's pecuniary loss. In non-human trafficking cases involving victims who are awarded restitution for non-pecuniary losses such as physical or emotional injuries that are not compensable under the remission regulations, the USAO may request that the court order that funds seized but not finally forfeited be paid directly towards the satisfaction of the defendant's restitution obligation.³² This pre-forfeiture procedure can be used if the seized property is liquid and there are no third-party claimants to the seized funds.³³

If there is more than one victim and insufficient forfeited proceeds to pay full restitution, the restitution order generally must specify that funds are to be distributed to victims pro rata in order to qualify for restoration.³⁴ Private victims, however, may take priority over government victims.³⁵ Direct victims also take priority over third parties, such as insurance carriers that provided compensation to the victim.³⁶ Forfeited funds that are restored to the victim are generally credited against the defendant's restitution obligation. The defendant, however, is still obligated to pay any restitution not covered by the forfeited funds. The possibility of restoration may give a defendant additional incentive to accept forfeiture as part of a plea agreement or stipulation. Such agreement or stipulation cannot, however, commit the Attorney General to granting restoration. It may only state that the U.S. Attorney will request that the Attorney General approve

³¹ See 18 U.S.C. § 1594(f)(1).

³² See DEP'T OF JUSTICE, OFFICE OF THE JUSTICE PROGRAMS, OFFICE FOR VICTIMS OF CRIMES, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE Art. Ch. V, Sec. H.2(a) (2011 ed., rev. May 2012).

³³ See *id.*

³⁴ See 18 U.S.C. § 3664(i).

³⁵ *Id.*

³⁶ 18 U.S.C. § 3664(j)(1).

restoration. The final decision regarding remission or restoration always rests with the Attorney General.³⁷

V. Which distribution process to use?

In criminal cases, the USAO may need to choose between initiating remission or restoration. Restoration is generally preferable in cases in which a restitution order accounts for all victims and accurately reports their loss amounts. In multiple-victim cases, restoration is usually faster and more efficient than remission because it eliminates the need for each victim to file a petition and for the government to review each petition. In addition, funds forfeited in administrative, civil, or criminal forfeiture matters can all be included in a single restoration request and transferred together to the clerk of court for distribution to the victim(s).

If, on the other hand, there is no criminal case or restitution order, or the restitution order is not complete or is otherwise defective, remission should be used to ensure that all victims receive full and timely compensation. Because remission is not subject to the time constraints imposed by the Federal Rules of Civil or Criminal Procedure or by the court, a more deliberate search for potential victims and review of their petitions is generally possible. In complex multiple-victim criminal cases, it may be more efficient to request that the court approve a remission process in lieu of restitution.³⁸ The government took this course in *Madoff*.

In appropriate cases, MLARS may use a hybrid process that includes restoration along with petitions for remission. For example, in some complex cases, additional victims may be identified after entry of a restitution order, and it may not be feasible or practicable to vacate or amend the restitution order to include these victims. A hybrid restoration-remission process may be used based on such

³⁷ 21 U.S.C. § 853(i)(1); 28 C.F.R. § 9.1(b)(2) (delegating remission authority to the Chief of MLARS); [Order No. 2088-97 Delegation of Authority to Restore Forfeited Property or Take Other Action to Protect the Rights of Innocent Persons in Civil and Criminal Forfeitures](#), 1997 WL 34775450 (O.L.C.) (restoration authority has been delegated to the Chief of MLARS); [United States v. Pescatore](#), 637 F.3d 128, 137 (2d Cir. 2011) (finding the Attorney General has discretion to choose between restoration of forfeited funds to victims and retention of funds); [ASSET FORFEITURE POLICY MANUAL](#) (2019), Chap.14, Sec.2.B.3.

³⁸ 18 U.S.C. § 3663A(c)(3)(A).

factors as: (1) the number of victims included in, and omitted from, the restitution order; (2) the reasons victims were not initially identified (for example, through no fault of their own); and (3) the amount of net forfeiture proceeds available for distribution to the victims.

Many cases with multiple victims have assets forfeited both administratively and judicially. In such cases, the administrative agency should await MLARS's decisions on remission to ensure consistency and to coordinate disbursements. In criminal cases, the USAO and the case agent should consult and coordinate with MLARS early in the case regarding strategies for compensating victims.

VI. Large multiple-victim cases

With the advent of the internet and other technological advances in communications, it is increasingly common for criminals to victimize hundreds or thousands of victims from around the world in a single scheme. Due to the large number of potential victims, government in-house noticing of victims, petition review, and disbursement to victims may not be feasible. Consequently, the Department and MLARS have arranged to employ private claims administration firms to provide support for petition processing in such cases. These firms are experienced in mass tort and fraud litigation and have worked with federal regulatory agencies such as the Securities and Exchange Commission and Federal Trade Commission. The contractor assists the USAO and MLARS with the design of notices and petitions, handles all contact with victims through toll-free hotlines and websites, processes petitions, makes remission recommendations, and distributes funds to victims. The contractor's fees are deducted from the forfeited assets prior to distribution to victims.³⁹ Due to internal efficiencies and the absence of legal fees and expenses, the contractor's fees are typically a small fraction of the forfeited funds available for distribution.

USAOs handling a civil or criminal forfeiture in cases involving many potential victims (generally 100 or more) should contact MLARS to determine the need for and availability of administrative support. MLARS will provide a questionnaire regarding the underlying facts, amount and nature of assets, number of potential victims, status of forfeitures, etc. When appropriate, MLARS will award a contract to a claims administrator through a competitive bid process.

³⁹ [28 C.F.R. § 9.9\(c\)](#).

VII. Forfeiture and bankruptcy

In larger financial fraud cases, it is not uncommon for the perpetrator or his creditors to initiate bankruptcy proceedings. The USAO should work with the court-appointed bankruptcy trustee to ensure that the interests of victims and creditors are each protected. Bankruptcy has two principal goals: to provide honest but unfortunate debtors with a fresh start, and to facilitate orderly payment of debts to creditors. A key difference between bankruptcy and forfeiture is that forfeiture provides recovery for victims who may not qualify as creditors in a bankruptcy proceeding. In prosecuting civil or criminal cases involving both forfeiture and bankruptcy, government attorneys should be aware of the differences between the two regimes in order to leverage both for maximum recovery for victims.

Crime victims' interests are typically better protected if a defendant's assets are forfeited rather than administered through the bankruptcy estate. Congress provided that criminal defendants must compensate their victims for the full amount of the loss caused by the criminal conduct, without regard to the defendant's economic circumstances or creditors.⁴⁰ Because criminal forfeiture does not provide a recovery for a defendant's unsecured creditors unless they are also victims of the crime, victims stand to recover a larger share of their losses through forfeiture than in bankruptcy.

In addition, the forfeiture process is generally more cost efficient than bankruptcy. In forfeiture, the only expenses that are taken from assets forfeited in a particular case are actual out-of-pocket costs associated with the storage and liquidation of the assets, and in some larger cases, the costs of evaluating petitions for remission and the distribution of funds to victims. The remaining costs are paid from agency accounts.⁴¹ Because of internal efficiencies, the direct costs associated with the remission process are typically a small fraction of the forfeiture recoveries.

By contrast, creditors in a bankruptcy case are compensated pursuant to a statutory priority scheme under which all of the debtor's secured and unsecured debts to creditors, lenders, suppliers, and employees, as well as administrative expenses and attorney fees, may

⁴⁰ 18 U.S.C. § 3664(f)(1)(A).

⁴¹ See 28 U.S.C. § 524(c)(1)(E); 31 U.S.C. § 9705(a)(1)(E).

be taken from recovered assets ahead of crime victims.⁴² Because most bankruptcies recover substantially less than the amount lost by secured and unsecured creditors, victims may be left with little or no recovery. Indeed, in some bankruptcy cases the administrative expenses alone can render an estate “administratively insolvent,” meaning that only the professional fees and other costs of administration are paid.

In cases involving foreign assets, governments and international law enforcement agencies are generally more receptive to assisting with a forfeiture action than with a purely civil process like bankruptcy. With defendants increasingly transferring criminal proceeds into and out of foreign jurisdictions, a United States court order can be highly persuasive in convincing a foreign court or government to assist in recovering assets. Moreover, forfeiture empowers the government to recover certain assets that may not be reachable by the bankruptcy estate. For example, the “relation-back doctrine” vests title to property in the United States retroactive to the time of the offense underlying the forfeiture,⁴³ which is not available in bankruptcy law.

On the other hand, a bankruptcy trustee has some powers not available to the government in a forfeiture action. For example, the trustee may investigate and recover a variety of claims against third parties, including preference claims under 11 U.S.C. § 547(b) and actions to avoid certain transfers, such as payments the debtor made to third parties shortly before seeking bankruptcy protection.⁴⁴ A trustee can also engage in broad examinations of the “acts, conduct, or property or to the liabilities and financial condition of the debtor.”⁴⁵ In addition, bankruptcy can be more effective in dealing with complicated business assets. The Bankruptcy Code provides a process to collect accounts receivables, to handle payroll and employee benefits, to sell office equipment, to transfer intellectual property, and to reject leases. The Bankruptcy Code also facilitates the sale of assets free and clear of any liens or interests.⁴⁶ Assistant United States Attorneys handling

⁴² See 11 U.S.C. § 507.

⁴³ See 21 U.S.C. § 853(c).

⁴⁴ 11 U.S.C. § 547.

⁴⁵ FED. R. BANKR. P. 2004(b).

⁴⁶ 11 U.S.C. § 363(f).

forfeiture cases involving bankruptcy and victims may wish to consult Alice W. Dery's article, *Interplay Between Forfeiture and Bankruptcy*.⁴⁷

VIII. Practice pointers

Important do's and don'ts for government prosecutors, agents, and support staff handling victim cases include the following:

- **DO** keep victims advised of case status through the Victim/Witness Unit, USAO or contractor website, and other forms of communication such as email or postal mail.
- **DO** coordinate with your Financial Litigation Unit and court probation office to identify all potential victims.
- **DO** tell victims that claim processing in larger cases is time-consuming and that distribution will likely take one year or more after the remission petition deadline has passed.
- **DO** assure victims that all forfeited funds will be distributed to victims after deduction of government expenses.
- **DO** weigh all possible options for distribution to victims, for example, remission, restitution, or restoration. Obtaining the optimal outcome for the victim is the primary goal, regardless of which tools are used.
- **DO** ask MLARS for help and guidance. MLARS will provide a procedural checklist for restoration and remission cases and can provide additional assistance as needed.
- **DON'T** tell victims that they will receive a specific dollar amount or a certain percentage of their loss. The calculation of each victim's recovery is not known until all petitions and requests for reconsideration are processed and the funds are ready to be distributed.
- **DON'T** tell victims to expect remission payments by a particular date. Unforeseen factors can delay distribution, such as discovery of additional victims or judicial appeals of forfeiture orders.
- **DON'T** try to do everything in-house in larger cases. Attempting to handle a large, multiple-victim case with limited resources can delay remission and ultimately increase government costs.

⁴⁷ Alice W. Dery, *Interplay Between Forfeiture and Bankruptcy*, 66 U.S. ATT'YS BULL., no. 2, 2018, at 117.

- **DON'T** make equitable sharing or official-use commitments in victim cases. Victims have priority over equitable sharing and official use requests.

IX. Conclusion

One of the most rewarding aspects of serving in law enforcement is the opportunity to help victims of crime. Victims are often embarrassed or remorseful about their victimization and are genuinely grateful for any recovery they may receive. It is not unusual to receive thank you notes from victims after they have received remission or restoration payments. The following are some additional messages⁴⁸ received from victims in the *Madoff* case:

After 10 years of struggles and pain you gave me the chance to live again. . . . I would like to Thank You . . . for the efforts you have been putting together all these years in recovering what was stolen and bringing back true justice to its rightful owners.

Thanks so much for caring about us, and all the other victims. . . I honestly had gotten to the point that I didn't think anyone cared about us at all; but your kindness, and caring, is beyond any expectations.

It's great to see how U.S. Justice is able to manage the compensation on a global scale, here us being in Germany. Next to efficient communication via electronic media, it builds trust how customer in the financial markets are protected by U.S. government.

I just wanted to thank you, your organization, your laws, your public servants and in general your country, for all the time, dedication and determination in trying to recover value for investors involved in the Madoff scam worldwide, regardless their nationality, creed and origin. Pursuing justice, domestically and abroad is one

⁴⁸ *Notes to MVF*, MADOFF VICTIM FUND, www.madoffvictimfund.com (last visited July 22, 2019).

of the things that make your country great. You all should be very proud of it.

Victims across the world receive forfeited funds obtained as a result of cooperation between prosecutors and law enforcement agencies. The ability to seize and restrain assets for civil or criminal forfeiture, provides victims recovery that would otherwise have been unavailable. Prosecutors and agents are encouraged to contact forfeiture experts across the country to ensure all steps are taken to preserve criminal proceeds early in a case to increase the potential recovery for crime victims.

About the Authors

Alice W. Dery is Chief for the Program Management and Training Unit in the MLARS, Criminal Division, and is responsible for critical nationwide law enforcement initiatives and Department programs, including the transfer of forfeited funds to victims of crime, the United States Victims of State Sponsored Terrorism Fund, and the Equitable Sharing Program. Prior to serving in her current position, Ms. Dery has held several positions in MLARS including Deputy Chief of the Policy and Training Unit, and the Program Management and Strategic Planning Unit; Assistant Chief of the Legal Policy Unit; Assistant Chief of the State and Local Liaison Unit; and Special Counsel to the Section Chief. Since joining the Department in 1986, Ms. Dery has received numerous Department awards. Most recently, Ms. Dery was selected as a John Marshall Award recipient in Support of Litigation for *Honeycutt v. United States* Criminal Forfeiture Case Guidance and the John C. Keeney Award for Exceptional Integrity and Professionalism by the Assistant Attorney General of the Criminal Division.

Jennifer Bickford is a Deputy Chief for the Program Management and Training Unit of the MLARS, where she oversees the use of forfeited funds to compensate victims and support law enforcement. She also provides advice, guidance, and training to United States Attorneys' Offices, federal seizing agencies, and state and local law enforcement regarding asset forfeiture policy, victim compensation practice, and the Equitable Sharing Program.