

Adelphia Victim Fund: Petition Form Signature Requirements

We have received numerous inquiries about the signature requirements for the Adelphia Victim Fund (“AVF”) – namely, the requirements that (1) the actual victim who sustained the loss submit the petition, rather than the victim’s bank or brokerage firm and (2) persons signing the Petition Form on behalf of an institutional petitioner document their authority to execute an effective release on behalf of that entity. These requirements are not generally encountered in distributions of class action settlements. There are two reasons for these exacting signature requirements. First, AVF is a Department of Justice Forfeiture Fund governed by federal regulations that prescribe specific signature requirements and these include a requirement that petitioners certify the accuracy of the transaction information in the petition they submit. *See* 28 C.F.R. Part 9. Second, the United States Attorney’s Office (“USAO”) created this Fund from the proceeds of a settlement with the Rigas Family (the “Settlement Agreement”). The Settlement Agreement provides that all victims who receive a distribution from AVF must provide valid and enforceable releases to the Rigas Family, as well as certain indemnifications to cover instances where the petitioner has sued a third party who then claims over against the Rigas Family (see pages 9-11 of the Adelphia Petition Form).

The Part 9 Signature Requirement

Section 9.4 of Chapter 28 of the Code of Federal Regulations provides that a petition for mitigation “shall be sworn to by the petitioner or by the petitioner’s attorney upon information and belief, supported by the client’s sworn notice of representation . . . , as set forth in § 9.9 (g).” Section 9.9 (g) provides:

A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner that:

- (i.) The attorney has the authority to represent the petitioner in this proceeding;
- (ii.) The petitioner has fully reviewed the petition; and
- (iii.) The petition is truthful and accurate in every respect.

The regulations make clear that, except in cases where a petitioner lacks mental capacity and is represented by a guardian, the petitioner must verify the truth of the petition either by signing it or by signing an accompanying sworn statement (in cases where the petition is submitted by a petitioner’s attorney).

The regulations permit the filing of a consolidated petition (i.e., a petition on behalf of a group of claimants), but only in very narrow circumstances and only in the

discretion of the Ruling Official.¹ Such a consolidated petition must be filed by a petitioner who has a claim in its own right and there must be documentary evidence of the authority to file a claim on behalf of other claimants. The examples given include an insurer or the administrator of an employee benefit plan. *See* 28 C.F.R. § 9.9 (h). A relationship between a client and his/her broker or custodian bank would not satisfy this provision.

The Release Requirement

The AVF signature requirements are also derived from the release requirement contained in the settlement agreement between the USAO and the Rigas Family. The terms of the release and related indemnification in the petition form for AVF were mandated by the Settlement Agreement.

In a class action settlement, the release of the defendant(s) is customarily contained in a settlement agreement which has been reviewed and approved by the Court. In the Adelphia settlement, by contrast, the *individual petitioners must each provide a valid and binding release* of the Rigas Family in order to participate in the AVF. This has two implications. For an individual, the petitioner must personally execute the release himself or herself, unless there is an unambiguous power of attorney which includes a right to release claims on behalf of the individual.² Second, where a petition is submitted on behalf of an entity (i.e., a partnership, corporation, limited liability company or other entity), the person executing the petition must either hold a position that would typically carry the authority to release claims, such as a CEO, CFO, General Counsel or other senior officer, or must provide documentation of his/her authority (e.g., a board resolution) to execute a release on behalf of the entity in this matter.

Conclusion

We recognize that the signature requirements that pertain to the AVF are more rigorous than those that ordinarily apply in settlement fund distributions. However, we have been directed by the Department of Justice to administer AVF in accordance with the federal regulations that govern it and the terms of the settlement agreement between the USAO and the Rigas Family. We therefore must insist on strict compliance with the signature requirements set forth in the applicable regulations as a condition of participation in the AVF.

¹ The regulations authorize the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division of the Department of Justice to delegate oversight authority of a specific fund to a person under his/her supervision. That person is referred to as a “Ruling Official.”

² Even there, as noted above, the regulations require that the petitioner make certain sworn representations.

Adelphia Victim Fund Explanation of Petition Signature Deficiencies

The purpose of this notice is to advise you that the petition(s) you submitted to Adelphia Victim Fund (the “Fund”) is deficient because of a problem with the signature. Some petitions may have other deficiencies as well, which have been addressed previously in separate correspondence sent to the bank or broker that supplied us with the transaction information used to prepare your petition.

Background

The Fund holds the proceeds of a settlement entered into by Adelphia Communications Co. and the Rigas family with the United States Attorney’s Office for the Southern District of New York. The terms of the settlement require that any person who receives a distribution from the Fund must release the Rigas Family³ and Peter L. Venetis (the “Released Parties”) from “any and all actions, claims or liabilities of any nature in relation to the ownership, control or management of Adelphia Communications Corporation by the Rigas Family . . .”⁴ Unlike a typical class action proceeding in which the release of a defendant(s) is a part of the class settlement agreement and not a requirement in connection with the submission of a Proof of Claim, the distribution of this Fund requires that we obtain a release for the defendant, in this case the Released Parties defined above. There is also a separate release of the persons involved with the distribution of this Fund for their role in that process. The Petition Form contains the required releases and it must be signed by a person authorized to grant such releases on behalf of the organization filing the claim.

In many cases a bank or brokerage firm submitted your transaction information electronically. In those cases we used the raw transaction data to prepare a petition form and sent it to you for review and signature. We need an authorized person to sign this petition to certify that the information in the petition is accurate and to grant the releases contained in the petition.

Who may sign?

If you are an individual claimant you may sign the petition on your own behalf. **If you are a corporation, limited liability company, partnership, mutual fund, pension plan or other organization, the petition must be signed by someone who is authorized to release a claim on behalf of the organization.** You must provide proof

³ With the exception of John J. Rigas and Timothy J. Rigas.

⁴ There is a separate requirement that if a petitioner seeks to recover his Adelphia losses from a third party and the third party seeks indemnification from the Rigas Family, then the petitioner must reimburse the Rigas Family for amounts they are required to pay. In effect, anyone who receives a distribution from Adelphia Victim Fund cannot recover separately from the Rigas Family, either directly or indirectly. The full text of these provisions is set forth in the Petition Form.

of such authority (in the form of a board resolution, for example) if the person who signs the petition is not a senior executive or senior legal officer of the enterprise.

Pre-populated Petitions

If you have received a pre-populated petition from AVF, please make sure you sign and return to us the entire pre-populated petition, including the pages that have transaction information and the pages that address any collateral recovery.

Recommended Resolutions to Signature Deficiencies

Depending on the nature of the entity that is submitting the petition for recovery from the Adelpia Victim Fund, individuals that possess the following titles are considered to have authority to sign a petition and grant an effective release on behalf of their organization without any further proof of authority:

Corporation

- Chairman of the Board
- President
- Chief Executive Officer (CEO)
- Chief Operating Officer (COO)
- Executive Vice President
- General Counsel

Partnership

- General Partner⁵

Charitable Foundations

- President
- Executive Vice President
- Executive Director

Funds

- Fund Manager³

Pension Plan

- Administrator
- Trustee

For individuals executing the release on behalf of a legal entity who do not possess the requisite title denoted above, we require that the person or legal entity submit proof of that individual's authority to grant a release on behalf of the legal entity in one of the following ways:

1. Company Bylaws or a Board resolution that authorizes that person or a person with that title to grant a release on behalf of the organization; or
2. A letter from the General Counsel or an Associate General Counsel of the organization confirming that the person who signed the petition has authority to execute an effective release on behalf of the organization.

⁵ If the General Partner or Fund Manager is a corporation or a limited liability corporation, the individual signatory would have to meet the requirements set forth above for the relevant entity.

Investment Advisors or Investment Managers

If you are an Investment Advisor or Investment Manager submitting a claim on behalf of a Fund whose investments you direct, you must provide documentation that demonstrates your authority to file a petition and to execute the corresponding legally binding release on behalf of the petitioner. To satisfy the signature requirements, you must provide:

1. Investment management agreement which gives you the authority to assert and release claims on behalf of the fund; and
2. Documentation establishing the authority of the person who signed the petition to act on behalf of the investment manager (unless the person holds one of the positions indicated above whose authority is accepted without documentation).

Power of Attorney

We have received some petitions submitted by persons who hold powers of attorney and who purport to submit the petitions on behalf of another person or an institution. Because this is a Department of Justice forfeiture distribution, it is governed by federal regulations that impose specific requirements on the use of powers of attorney. See 28 C.F.R. 9.9 (g).

The regulations provide that when an individual submits a petition under a power of attorney that the petitioner must submit a signed statement that: (1) the attorney has the authority to represent the petitioner in this proceeding; (2) that the petitioner has fully reviewed the petition and (3) that the petition is truthful and accurate in every respect.

Where the attorney represents an individual, the individual must review the petition, verify its accuracy and then prepare and sign the statement described in the paragraph above.

Where the attorney represents an institution, then the person who signs the power of attorney on behalf of the institution must be a senior officer of the institution who would have the authority to release a claim against the institution in his/her own right, in accordance with the standards detailed above.

If you have any questions as to how to cure a signature deficiency, please contact the AVF toll free at 1-866-446-4884.

Sincerely,

Adelphia Victim Fund