

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re

CASE NO. 9:08-bk-04360-MGW

ULRICH FELIX ANTON ENGLER,  
PRIVATE COMMERCIAL OFFICE, INC.,  
and PCO CLIENT MANAGEMENT, INC.,

CHAPTER 7  
(Substantively Consolidated)

Debtors.

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**TRUSTEE'S OBJECTION TO CLAIM OF ULRICH MESSMER**  
**(CLAIM NUMBER 493)**

**NOTICE OF OPPORTUNITY TO**  
**OBJECT AND FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a response within 45 days from the date set forth on the proof of service attached to this paper plus an additional three days for service. If you object to the relief requested in this paper, you must file your response with the Clerk of the Court at Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602-3899, and serve a copy on counsel for the Trustee at Robert F. Elgidely, Esq., Genovese Joblove & Battista, P.A., 200 East Broward Boulevard, Suite 1110, Fort Lauderdale, FL 33301, and any other appropriate persons within the time allowed.

If you file and serve a response within the time permitted, the Court may schedule and notify you of a hearing, or the Court may consider the response and may grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

**For additional information regarding these Chapter 7 cases,  
please visit [www.englerbk.com](http://www.englerbk.com)**

ROBERT E. TARDIF, JR. (the "Trustee"), as Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. ("Engler," "PCO," and "PCOM," respectively, or

collectively, the “Debtors”), hereby files this objection (the “Objection”) to Claim Number 493 filed by Ullrich Messmer (the “Claim”) pursuant to 11 U.S.C. § 502(b), Federal Rule of Bankruptcy Procedure 3007, Local Rule 3007-1, the *Order Granting Trustee’s Motion To Establish Claim Objection Procedures And To Authorize Filing Of Omnibus Claim Objections On Certain Additional Grounds* (Doc. 1024) (the “Claim Objection Procedures Order”), and the *Order Granting Trustee’s Motion For Entry Of An Order Approving Stipulation Partially Resolving Proof Of Claim Numbers 64 Through 69, 443, 444, And 493 Filed In The Engler Bankruptcy Case And Proof Of Claim Numbers 62 Through 67, 146, 147, And 151 Filed In the Private Commercial Office, Inc. Bankruptcy Case* (Doc. 1048) (the “Group Claim Stipulation Order”), and states in support thereof as follows:

1. On March 31, 2008 (the “Petition Date”), a group of creditors filed involuntary petitions for relief under Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) against Engler and PCO with the Clerk of this Court.
2. On April 29, 2008, the Court entered Orders for Relief against Engler and PCO (collectively, the “Initial Debtors”).
3. On April 30, 2008, the Trustee was appointed and continues to serve as the permanent Chapter 7 Trustee for the Debtors’ estate.
4. On June 24, 2008, the Court entered an Order substantively consolidating the assets and liabilities of the Initial Debtors’ bankruptcy estates.
5. On July 31, 2008, the Clerk of the Court issued a Notice fixing November 3, 2008 (the “Bar Date”) as the deadline for filing proofs of claim in the Debtors’ estate (Doc. 72).
6. On November 3, 2008, Ullrich Messmer (“Messmer”) filed Claim Number 493 as an unsecured claim in the amount of \$2,016,355.07.

7. The Claim was filed on behalf of certain individual investors. The individual investor claims add up to the total amount of the Claim.

8. On April 23, 2010, the Court entered an Order substantively consolidating the assets and liabilities of PCOM with and into the Initial Debtors' estate *nunc pro tunc* to March 31, 2008.

9. On July 28, 2010, the Court entered an *Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures* (Doc. 451) which, *inter alia*, authorized the Trustee to serve filings via the website EnglerBk.com.

10. On October 21, 2014, the Trustee filed his *Motion for Entry of an Order Approving Stipulation Partially Resolving Proof of Claim Number 64 Through 69, 443, 444 and 493 Filed in the Engler Bankruptcy Case and Proof of Claim Number 62 Through 67, 146, 147 and 151 Filed in the Private Commercial Office, Inc. Bankruptcy Case* (Doc. 1044) seeking approval of a Stipulation by and between the Trustee and HIMA AG, Mantel & Partner, Congro Finanz AG, Primus GmbH and Ullrich Messmer (the "Group Claim Stipulation"). The Group Claim Stipulation resolved certain of the Trustee's objections to Claim Number 493, including but not limited to: (i) the secured nature of the claim, (ii) the purported assignments related to the claim; and (iii) the duplicate nature of the claim with claims filed in the PCO bankruptcy case.

11. The Group Claim Stipulation did not resolve the Trustee's objections to the merits of the individual claims underlying the Claim.

12. By this Objection, the Trustee seeks an Order of the Court reducing the Claim to the amount of the aggregate allowable claims of the individual investors.

13. Exhibit “A” lists the individual claims which are the subject of the Trustee’s Objection for one or more of the reasons set forth below and the recommended disposition of each such individual claim underlying the Claim.

14. However, the Trustee reserves the right to amend the Objection, to object on additional grounds not set forth in the Exhibit and/or to object to any further claims not presently set forth on the Exhibit. By filing this Objection, the Trustee does not waive the right to file further objections or to pursue other courses of action as may be deemed appropriate under applicable law.

#### **GROUND FOR OBJECTION TO INDIVIDUAL CLAIMS**

***Duplicate:*** This individual investor’s claim is duplicative of another claim filed by the individual investor in the substantively consolidated bankruptcy cases of Engler, PCO, and/or PCOM. As a result, the individual investor’s portion of the Claim should be stricken and disallowed in its entirety. Exhibit “A” specifies the individual investor’s remaining claim against the Debtors’ substantively consolidated estate. The remaining claim may be subject to further objection(s) for additional reasons set forth herein or in future objections to claims.

***Individual Claim Exceeds Net Investment:*** The amount of the individual investor’s claim exceeds the net investment set forth in the Debtors’ books and records including, but not limited to, the Debtors’ bank records. A “net investment” is the principal of the investment, less any amounts received from the Debtors as either return of principal or interest payments. As a result, such individual investor’s claim should be reduced to the amount indicated on the Exhibit, to the extent the Trustee does not seek to strike and disallow such claim for additional reasons set forth herein.

***Individual Claim Includes Interest:*** The individual investor’s claim includes a component for interest which is not permitted under applicable state and bankruptcy law. The Debtors were engaged in a Ponzi scheme and interest or “false profits” are not permissible as claims against the Debtors’ substantively consolidated estate. As a result, such individual investor’s claim should be reduced and allowed in the amount indicated on the Exhibit, to the extent the Trustee does not seek to strike and disallow, or further reduce, such claim for additional reasons set forth herein.

***No Record of Deposit From Individual Investor:*** The Debtors’ bank records do not show any deposit made by the individual investor to the Debtors. The Claim

does not contain enough supporting information to enable the Trustee to evaluate whether or not the individual investor made an investment with the Debtors. The individual investor is not a known creditor of the Debtors and was not scheduled by the Debtors. As a result, the individual claim amount should be stricken and disallowed from the Claim in its entirety.

***Individual Investor is Net Profiteer:*** The Debtors' books and records including, but not limited to, the Debtors' bank records, show that the individual investor is a "net profiteer" in the Debtors' Ponzi scheme. A net profiteer is an individual or entity who received return of principal or interest payments in excess of the principal amount invested with the Debtors. Because the individual investor's principal was returned in full prior to the Petition Date, the individual investor is not entitled to any further claim against the Debtors' substantively consolidated estate. As a result, the individual investor's portion of the Claim should be stricken and disallowed in its entirety.

**WHEREFORE**, the Trustee respectfully requests the Court to enter an Order: (i) reducing the Claim to the amount of the aggregate allowable claims of the individual investors as set forth on the attached Exhibit; and (ii) granting such other and further relief as is just and appropriate.

Dated this 23<sup>rd</sup> day of January, 2015.

Respectfully submitted,

/s/ Robert E. Tardif, Jr.  
Robert E. Tardif, Jr., Trustee  
Florida Bar No. 818704  
P.O. Box 2140  
Fort Myers, Florida 33902  
Telephone: 239/362-2755  
Facsimile: 239/362-2756  
E-Mail: [rtardif@comcast.net](mailto:rtardif@comcast.net)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing *Trustee's Objection To Claim Of Ullrich Messmer (Claim Number 493)* has been furnished to counsel for the claimant list below, all creditors and/or interested parties registered on the Court's CM/ECF System and was also posted on the website "englerbk.com" in accordance with the Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures (Doc. 451) on January 23, 2015.

By: /s/ Robert E. Tardif, Jr.  
Robert E. Tardif, Jr.

(Via U.S. Mail)

URBAN THEIR FEDERER & CHINNERY, P.A.  
Attn: John L. Urban  
200 S. Orange Ave.  
Suite 2000  
Orlando, FL 32801  
*Counsel for Claimant*

Claim #	Claimant	Investor	Filed Claim Amount (Pre-Objection)	Recommended Claim Amount (Post-Objection)	Duplicate Individual Claim (Case No. 9:08-bk-04360- MGW)	Duplicate Individual Claim Amount (subject to further objection)
493	Messmer	Aebischer, Dorothea	\$ 15,938.48	\$ -		
493	Messmer	Banziger(for MichelePittet), Ursula	\$ 6,077.53	\$ -		
493	Messmer	Banziger(for JasminePittet), Ursula	\$ 6,077.53	\$ -		
493	Messmer	Banziger(for SimonPittet), Ursula	\$ 6,055.65	\$ -		
493	Messmer	Banziger, Ursula	\$ 114,484.36	\$ -		
493	Messmer	Biedermann, Roland	\$ 10,000.00	\$ -		
493	Messmer	Bucci-Collovati, Silvana	\$ 60,000.00	\$ -	6-E	\$ 70,000.00
493	Messmer	Bucci-Collovati, Silvana	\$ 10,000.00	\$ -	6-E	\$ 70,000.00
493	Messmer	Ernst, Severin	\$ 5,000.00	\$ -		
493	Messmer	Fuglister, Rene	\$ 100,000.00	\$ -		
493	Messmer	Furler, Marielle	\$ 31,170.93	\$ -		
493	Messmer	Furler, Marielle	\$ 30,287.84	\$ -		
493	Messmer	Gamper, Kurt	\$ 50,800.00	\$ 31,427.73		
493	Messmer	Gantner, Klaus	\$ 195,524.75	\$ 100,000.00		
493	Messmer	Hbsli, Barbara	\$ 19,987.00	\$ -		
493	Messmer	Hbsli, Barbara	\$ 10,000.00	\$ -		
493	Messmer	Hbsli, Daniel	\$ 29,974.00	\$ -		
493	Messmer	Kraus-Jaeggi, Silvia	\$ 14,959.24	\$ -		
493	Messmer	Langes, Andrea	\$ 6,828.75	\$ -		
493	Messmer	Lerf, Patrick	\$ 12,762.82	\$ -		
493	Messmer	Inderbitzin, Anja & Oliver	\$ 19,837.22	\$ -		
493	Messmer	Inderbitzin, Walter & Martha	\$ 10,000.00	\$ -		
493	Messmer	Meier, Sonja & Arnold	\$ 316,801.80	\$ 77,198.20		
493	Messmer	Metzger, Thomas	\$ 52,671.21	\$ 47,328.80		
493	Messmer	Moser, Rene	\$ 22,036.77	\$ 19,987.50		
493	Messmer	Pallua, Christa & Romeo	\$ 65,312.29	\$ 58,687.70		
493	Messmer	Partmann, Mario	\$ 13,903.49	\$ -		
493	Messmer	Partmann, Nicole	\$ 8,040.57	\$ -		
493	Messmer	Pineider, Manfred	\$ 17,958.56	\$ 10,000.00		
493	Messmer	Resch (for Erwin Haselboeck), Martin	\$ 17,442.51	\$ 14,000.00		
493	Messmer	Schlegel, Christian	\$ 5,490.45	\$ 4,980.00		
493	Messmer	Stump (for Ruth Stump), Adolf	\$ 18,232.59	\$ -		
493	Messmer	Stump(for Ruth Stump), Adolf	\$ 18,232.59	\$ -		
493	Messmer	Stump(for Simone Stump), Adolf	\$ 18,232.59	\$ -		
493	Messmer	Stump, Adolf	\$ 50,000.00	\$ -		
493	Messmer	Sutter, Roland	\$ 17,958.55	\$ 8,204.14		
493	Messmer	TieberJunior, Leonard	\$ 10,750.00	\$ -		
493	Messmer	TieberJunior, Leonard	\$ 10,700.00	\$ -		
493	Messmer	TieberJunior, Leonard	\$ 11,000.00	\$ -		