

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

In re: Case No. 9:08-bk-04360-MGW  
Chapter 7  
(Substantively Consolidated)

Ulrich Felix Anton Engler,  
Private Commercial Office, Inc.,  
and PCO Client Management, Inc.,  
  
Debtors.

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**SUPPLEMENTAL FEE APPLICATION FOR ALLOWANCE AND  
PAYMENT OF COMPENSATION AND REIMBURSEMENT OF  
EXPENSES TO DR. ANNEROSE TASHIRO AND THE LAW FIRM OF  
SCHULTZE & BRAUN GMBH RECHTSANWALTSGESELLSCHAFT AS  
SPECIAL COUNSEL FOR CHAPTER 7 TRUSTEE, ROBERT E. TARDIF, JR.**

1. Name of applicant: Dr. Annerose Tashiro (attorney at law in Germany)  
and the law firm of Schultze & Braun GmbH  
Rechtsanwalts-gesellschaft
2. Role of applicant: Special Counsel for Chapter 7 Trustee
3. Name of certifying professional: Dr. Annerose Tashiro (attorney at law in Germany)
4. Date case filed: March 31, 2008
5. Date of application for employment: March 13, 2009  
Amended Application: October 23, 2009
6. Date of order approving employment: March 24, 2009  
Amended Order: November 23, 2009
7. If Debtor's counsel, date of Disclosure of Compensation from: *N/A*
8. Date of this application: May 13, 2019
9. Dates of services covered: June 24, 2017 – May 13, 2019
10. Amount trustee has on hand: \$1,241,928.79 from the funds garnished and held by SunTrust Bank; Amount to be deposited with court registry: \$1,161,623.93 (per Summary Attached to Doc. 1655); Approximate amount in Shultze & Braun Escrow Account: \$1,088.12.

**Fees**

|   |   |
|---|---|
| 11. Total fee requested for this period (from Exhibit XX):                | € 49.895,82 (\$56,731.55) <sup>1</sup>  |
| 12. Fees paid or advanced for this period, by other sources               | €0/\$0                                  |
| <b>13. Net amount of fee requested for this period:</b>                   | <b>€ 49.895,82 (\$56,731.55)</b>        |
| <b>Expenses</b>   |   |
| 14. Total expense reimbursement requested for this period                 | € 36.739,69 (\$41,769.35)               |
| 15. Balance remaining in expense retainer account, not yet received       | €0/\$0                                  |
| 16. Expenses paid or advanced for this period, by other sources           | €0/\$0                                  |
| <b>17. Net amount of expense reimbursements requested for this period</b> | <b>€ 36.739,69 (\$41,769.35)</b>        |
| <b>18. Total fee and total expenses award requested (#13 + #17)</b>       | <b><u>€ 86.635,51 (\$98,504.57)</u></b> |

<sup>1</sup> The exchange rate was determined by using the exchange rate calculator at <http://sdw.ecb.europa.eu/curConverter.do>

**History of Fees and Expenses**

- 1. Dates, sources, and amounts of retainers received: None
- 2. Dates, sources, and amounts of third party payments received: None
- 3. Prior fee and expense awards: First Interim Application and Second Interim Application

**First interim application: Prior Fee and Expense Awards**

Dates covered by first application: February 3, 2009 – August 31, 2010

Amount of fees requested: .....€745,630.55  
.....(US\$ 1,034,487.83)

Amount of expenses requested: .....€89,075.30  
.....(US\$ 123,583.07)

Amount of fees awarded:.....US\$1,034,487.83

Amount of expenses awarded: .....US\$123,583.07

Amount of fee retainer authorized to be used:.....N/A

Amount of expense retainer authorized to be used: .....N/A

**Second interim application: Prior Fee and Expense Awards**

Dates covered by second application: September 1, 2010 – December 31, 2014

Amount of fees requested: .....€548,848.54  
.....(US\$614,929.90)

Amount of expenses requested: .....€39,312.62  
.....(US\$ 44,045.86)

Amount of fees awarded:.....US\$614,929.90

Amount of expenses awarded: .....US\$44,045.86

Amount of fee retainer authorized to be used: .....N/A

Amount of expense retainer authorized to be used: .....N/A

**Third and final application: Fee and Expense Awards**

Dates covered by second application: January 1, 2015 – June 23, 2017

Amount of fees requested: ..... € 94,363.19  
.....(US\$107,290.95)

Amount of expenses requested:.....€2,993.98  
.....(US\$ 3,404.16)

Amount of fees awarded:.....US\$107,290.95

Amount of expenses awarded:..... .US\$3,404.16

Amount of fee retainer authorized to be used: .....N/A

Amount of expense retainer authorized to be used: .....N/A

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

**In re:**  
  
**Ulrich Felix Anton Engler,  
Private Commercial Office, Inc.,  
and PCO Client Management, Inc.,**

**Case No. 9:08-bk-04360-MGW  
Chapter 7  
(Substantively Consolidated)**

**Debtors.**

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**SUPPLEMENTAL FEE APPLICATION FOR ALLOWANCE AND  
PAYMENT OF COMPENSATION AND REIMBURSEMENT OF  
EXPENSES TO DR. ANNEROSE TASHIRO AND THE LAW FIRM OF  
SCHULTZE & BRAUN GMBH RECHTSANWALTSGESELLSCHAFT AS  
SPECIAL COUNSEL FOR CHAPTER 7 TRUSTEE, ROBERT E. TARDIF, JR.**

Dr. Annerose Tashiro, attorney at law in Germany, and the law firm of Schultze & Braun GmbH Rechtsanwalts-gesellschaft (“Schultze & Braun” or the “Applicant”), as special counsel for Robert E. Tardif, Jr. (the “Trustee”), Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. (hereinafter referred to as “Engler,” “PCO,” and “PCOM,” respectively, or collectively as the “Debtors”), hereby apply for further final allowance and payment of compensation for professional services rendered and reimbursement of expenses pursuant to Sections 328, 330, 331 and 503(b) of Title 11 of the United States Code (hereinafter the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy Procedure (hereinafter the “Bankruptcy Rule(s)”) and the United States Department of Justice, Executive Office for United States Trustee’s Guidelines For Reviewing Applications For Compensation And Reimbursement Of Expenses Filed Under 11 U.S.C. § 330 (the “Guidelines”).

**EXHIBITS TO APPLICATION**

In accordance with the Guidelines, the following exhibits are annexed to this application:

- Exhibit 1: Detailed Time Records of Services Rendered of each Professional for this Time Period Only
- Exhibit 2: Summary of Requested Reimbursements of Expenses for this Time Period Only
- Exhibit 3: Schedule of each transaction made on the escrow account within the Application Period

Exhibit 1 contains a list of Applicant's professionals who have provided services to the Trustee in the period June 24, 2017, through May 10, 2019 (the "Application Period"), for which Applicant seeks reimbursement in accordance with Section 330(a)(1)(B) of the Bankruptcy Code, the Bankruptcy Rules and the Guidelines. Exhibit 1 contains a daily description of the services rendered and the hours expended by Applicant's professionals who performed services in the case. Applicant prepared Exhibit 1 based on, among other things, contemporaneous daily time records maintained by the Applicant's professionals. Exhibit 1 also contains a list of Applicant's professionals who have provided services to the Trustee in the Application Period, by Activity Code Category.

Exhibit 2 contains a summary of Applicant's total, actual and necessary, out-of-pocket expenses and disbursements for which Applicant seeks reimbursement in accordance with Section 330(a)(1)(B) of the Bankruptcy Code, the Bankruptcy Rules and the Guidelines. The expenses and disbursements summarized in Exhibit 2 are those which Applicant typically would invoice to its non-bankruptcy clients.

Exhibit 3 contains a detailed schedule of each transaction made on the escrow account within the Application Period.

The Applicant seeks a final award of fees of € **49.895,82 (US\$56,731.55)** consisting of compensation for **217.332** hours worked during the Application Period.<sup>2</sup> The Applicant believes that the requested net amount of final fees of € **49.895,82 (US\$56,731.55)** is reasonable considering the twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5<sup>th</sup> Cir. 1974), made applicable to bankruptcy proceedings by *In re First Colonial Corp. of America*, 554 F.2d 1291 (5<sup>th</sup> Cir. 1977).

As indicated by the Applicant at the employment as special counsel and as customary for the Applicant, the calculation of fees and expenses underlying this fee application is based on the currency EURO. For your convenience, the equivalent amounts in US Dollar (which are subject to daily foreign exchange rate fluctuations) are stated in parentheses in the chart above and were calculated on the basis of the reference foreign exchange rate of the European Central Bank as of June 27, 2019 at 1 Euro (EUR) = \$1.137 USD.

**I. RETENTION OF APPLICANT, DISCLOSURE OF COMPENSATION AND REQUESTED AWARD**

On March 24, 2009, the Court entered an Order Authorizing Employment of Dr. Annerose Tashiro as special counsel for the Trustee [D.E. No. 121] (the “Employment Order”).<sup>3</sup> On November 23, 2009, the Court entered a Supplemental Order Authorizing Employment of Applicant as special counsel for the Trustee [D.E. No. 152] (the “Supplemental Employment Order”).<sup>4</sup> Pursuant to these orders, Applicant’s compensation is subject to approval of the Court.

This is the Applicant’s supplemental fee application filed in this case. Applicant seeks a fee award of € **49.895,82 (US\$ 56,731.55)** in fees for services rendered.

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<sup>2</sup> German system of legal costs and fees for attorneys at law, see C. 1. (General Background of Statutory Remuneration)

<sup>3</sup> The scope of the Employment Order was to assist in the investigation and recovery of assets in various European countries.

<sup>4</sup> The scope of the Supplemental Employment Order was to investigate and, if appropriate, assert fraudulent transfer actions against the Debtor, the Debtor’s affiliates, insiders, and other third parties in several European countries.

## II. CASE BACKGROUND

On December 4, 2007 the District Court (*Amtsgericht*) of Mannheim, Germany, issued an international warrant for Engler's arrest with respect to criminal charges involving the perpetration of a Ponzi scheme. Approximately one month after the Petition Date the Public Prosecutor's Office of Mannheim, Germany issued a request to the United States Government for Engler's arrest and extradition. On March 31, 2008 (hereinafter 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 Private Commercial Office, Inc. ("PCO") with the Clerk of this Court<sup>56</sup> (collectively, the "Involuntary Petitions"). On April 29, 2008, this Court entered Orders for Relief against Ulrich Felix Anton Engler and PCO (collectively, the "Orders for Relief")<sup>7</sup>.

On April 30, 2008, the Trustee was appointed and continues to serve as the permanent Chapter 7 Trustee for the Debtors' bankruptcy cases. On June 24, 2008, and April 23, 2010, the Court entered orders substantively consolidating the assets and liabilities of the Debtors' bankruptcy estates *nunc pro tunc* to March 31, 2008 (collectively, the "Substantive Consolidation Orders")<sup>8</sup>. On July 31, 2008, this Court issued a Notice establishing November 3, 2008 (the "Bar Date") as the deadline for filing proofs of claims in the Debtors' substantively consolidated estate (Doc. 72).

Between August 2008 and November 2008, individual unsecured creditors, who were mostly located in Europe, filed their claims via Ulrich Messmer ("Messmer"), who – unbeknownst to the individual unsecured creditors – utilized the assistance of the law firm of Urban, Their,

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<sup>5</sup> The bankruptcy cases were commenced approximately four months after the County Court of Mannheim, Germany issued an international warrant for Engler's arrest with respect to criminal charges involving the perpetration of a Ponzi scheme and approximately one month before the Public Prosecutor's Office of Mannheim, Germany issued a request for Engler's arrest and extradition to the United States Government.

<sup>6</sup> See Main Bankruptcy Case, D.E. 1, and Case No. 9:08-bk-04365-MGW, D.E. 1

<sup>7</sup> See Main Bankruptcy Case, D.E. 9, and Case No. 9:08-bk-04365-MGV, D.E. 10

<sup>8</sup> See Main Bankruptcy Case, D.E. Nos. 51, 242, and Case No. 9:08-bk-04365-MGW, D.E. 42



Federer & Chinnery, P.A. (“Urban Firm”) to file the proofs of claims. These claims are reflected in the group of claims filed as part of proofs of claims numbered 69, 444 and 493 (“Claimants” or “Claimant Group”). On August 7, 2008, the Urban Firm, on behalf of the Claimant Group, filed Claim Number 69 – consisting of 2,303 individual claims – as an unsecured claim in the amount of \$55,559,317.88. On October 31, 2008, the Urban Firm, on behalf of the Claimant Group, filed Claim Number 444 – consisting of 91 individual claims – as an unsecured claim in the amount of \$795,741.45.

On November 3, 2008, the Urban Firm, on behalf of the Claimant Group, filed Claim Number 493– consisting of 47 individual claims – as an unsecured claim in the amount of \$2,016,355.07. On September 7, 2011, the Court granted the finality of the Orders for Relief and the Substantive Consolidation Orders may be utilized in connection with recognition proceedings and avoidance suits commenced by the Trustee in France and Switzerland<sup>9</sup>. As of March 28, 2011, 1,225 Proofs of Claim in the aggregate amount of US\$ 313,132,754.01 were filed in the Engler bankruptcy case and 210 Proofs of Claim in the aggregate amount of US\$205,085,382.63 were filed in the PCO bankruptcy case.

On December 15, 2011, the putative class action Complaint against Wells Fargo Bank (formerly known as Wachovia Bank) was filed. This Complaint was amended on March 30, 2012 to include SunTrust Bank as a defendant. On July 29, 2012, US authorities arrested Engler in Las Vegas, Nevada, and in August 2012 deported him to Germany<sup>10,11</sup>. On March 4, 2013, Engler was convicted of two cases of fraud, in each case committed concomitantly with the offence of trading without a license in accordance with the German Banking Act (Kreditwesengesetz, KWG) by the

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<sup>9</sup> See D.E. Nos. 720 and 721

<sup>10</sup> See *German Fugitive Arrested in Vegas* at <http://www.cbsnews.com/news/german-fugitive-arrested-in-vegas/>. Last visited January 19, 2015.

<sup>11</sup> See *German Fugitive Wanted for Role in Multimillion Dollar Fraud Scheme Deported* at <http://www.ice.gov/news/releases/german-fugitive-wanted-role-multi-million-dollar-fraud-scheme-deported>. Last visited January 19, 2015.

Mannheim Regional Court and sentenced to eight and half years in prison. He is currently serving his sentence<sup>12</sup>.

On January 23, 2015, the Trustee filed objections to Claim numbers 444, 493, and 69 seeking reduction of the claims to the amount of the aggregate allowable claims of the individual claimants (Doc. Nos. 1053, 1055, and 1056). On October 15, 2015, this Court entered orders relating to Claim numbers 444 and 493, by which each individual claim of the Claimant Group was allowed, disallowed or allowed at a reduced amount in the manner set forth in the Court's order (Doc. Nos. 1187 and 1188). On February 3, 2016, this Court entered two orders with respect to Claim Number 69, by which each individual claim of the Claimant Group was allowed, disallowed or allowed at a reduced amount in the manner set forth in the Court's order (Doc. Nos. 1423 and 1424).

The Trustee filed his Final Report with this Court on July 19, 2017. The Trustee distributed a dividend to the creditors in these bankruptcy cases based on this Court's Orders dated October 15, 2015 (Doc. Nos. 1187 and 1188) and February 3, 2016 (Doc. Nos. 1423 and 1424). The Trustee made such distribution via postal delivery of checks accordingly on September 14 and September 15, 2017. Throughout the course of these cases, various Claimants continued to frequently contact Applicant and inquire about progress in the case, and in regards to when they would receive their distribution.

### **III. DESCRIPTION AND SUMMARY OF SERVICES PERFORMED**

Applicant expended a total of **206.915 hours** in the Categories of **General Services and Enforcement Litigation** and is requesting a total sum of **46.638,19 EUR (US\$ 53,027.62)** for the services rendered in these categories.

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<sup>12</sup> See Translation of the *Criminal Judgment of Ulrich Felix Anton Engler by Mannheim Regional Court [Landgericht Mannheim]*, Reference number: 24 KLS 635 Js 29088/12; AK 7712

**A. General Services Performed**

In January 2018 various individuals of the Claimant Group contacted the Applicant to inquire about their distributions, and their concerns about various communications from the Urban Firm. In addition, the individuals of the Claimant Group also sought the Applicant's help to finally obtain their dividend from the bankruptcy case after almost 10 years since the commencement of the case. Upon further discussions with the Claimants who reached out to the Applicant, the Applicant discovered that over 1,400 individual claimants of the Group Claimants had, or believed to have had, engaged their former broker of the respective investment into the Engler Ponzi scheme, Messmer, by supposedly "assigning" their claim to Messmer for the purpose of participating in this bankruptcy case. However, these claimants could no longer reach Messmer to inquire about the distribution. In some cases, the claimants learned that Messmer refused to answer their inquiries. The Applicant ascertained that Messmer lost his bar admission in Germany and was unable to cash the checks he received from the Trustee and thereby distribute the respective dividends allocated to each creditor per this Court's orders dated October 15, 2015 and February 3, 2016. Instead, upon receipt of the checks from the Trustee, but without consent from the actual holders of claims, the checks were delivered to a lawyer named John L. Urban ("Urban"), the founding shareholder of the Urban Firm.

Without seeking any relief from this Court or communicating with the creditors, Urban deposited and redeemed the value of the checks, presumably by depositing the funds in an IOTA trust account. Throughout the first half of 2018, Urban and the Urban Firm sent letters to the individual claimants, who were the intended recipients of the value of the checks. In essence, the letters sent by Urban and the Urban Firm proposed a 50% fee arrangement simply for providing the "service" of cutting them a check, a service that was never requested by the individual claimants. The letters also indicated that the only way for the individuals to receive their court-allowed distributions was by accepting the proposed 50% fee arrangement with the Urban Firm. The letters also threatened that if the individual claimant did not sign the "fee agreement," the

monies would be unclaimed and “revert to the treasury.” While various creditors have agreed to the terms set by the Urban Firm to distribute their dividend ordered by this Court, many have not, and expressed their concerns to the Applicant and retained the Applicant to seek return of their distribution from Urban & Their to the estate and make the distribution to them.

Applicant retained the law firm of Shumaker Loop & Kendrick (“Shumaker”) in May 2018 and filed an *Amended Joint Motion for Turnover of Undistributed Bankruptcy Estate Funds from Law Firm of Urban Thier Federer & Chinnery, P.A.* on June 26, 2018 (Doc. 1630 – the “Motion for Turnover”). Thereafter, the Motion for Turnover came on for hearing before this Court for hearings on July 25, 2018, September 12, 2018, October 25, 2018 and March 25, 2019 (Doc Nos. 1633-1636 and 1639-1641). Based upon an agreement reached with the Urban Firm, this Court entered an Order on October 15, 2018 to provide for the wire transfer of related funds via Shumaker’s trust account into the Applicant’s trust account (Doc. 1640). A total amount of 471,413.95 EUR (US\$535,997.66) could finally be distributed to these creditors before the end of the year 2018. The Applicant will continue to work on distributing the further \$55,840.83 once it receives the funds to distribute.

According to this Court’s May 30, 2019 Supplemental and Final Order on Amended Joint Motion for Turnover of Undistributed Bankruptcy Estate Funds from Law Firm of Urban Their Federer & Chinnery, P.A. (Doc. 1655), all remaining funds in the amount of US\$1,161,623.93 for creditors who are neither represented by the Applicant nor the Urban Firm (“Unrepresented Creditors”) were forwarded to the Clerk of this Court who shall now distribute funds to these Unrepresented Creditors, by and through the mechanism established in the order and by the help of the services of BMC Group, Inc. pursuant to this Court’s Supplemental and Final Order on Amended Joint Motion for Turnover of Undistributed Bankruptcy Estate Funds from Law Firm of Urban Their Federer & Chinnery, P.A., (Doc. 1655) dated May 30, 2019. In total, the Applicant was able to recover \$1,822,468.33 that the Urban firm was holding without the consent of the creditors (“Recovery Amount”) from the Claimants and the Unrepresented Creditors. Had the

Applicant not sought the return of the Estate's property, in order to facilitate a proper distribution as the Court had ordered, such distribution would likely still be in jeopardy and held by the Urban Firm.

The Applicant therefore addresses these circumstances and seeks relief from this Court to allow a compensation corresponding to the proportion of the Applicant's fees and expenses incurred for the return of the estate's property to be distributed to the Unrepresented Creditors consistent with this Court's Order dated October 15, 2018 (Doc. 1640). These fees and expenses incurred thereafter were incurred with a view to finally arrange for a distribution mechanism for the Unrepresented Creditors and not for the other creditors represented by the Applicant.

The Recovery Amount represents the distribution amounts to be distributed to Claimants represented by the Applicant and the Unrepresented Creditors. In particular, \$660,844.40 from the Recovery Amount is allocable to the creditors represented by the Applicant and \$1,161,623.93 is allocable to the Unrepresented Creditors. The amount recovered in favor of the Unrepresented Creditors, represents approximately 64% of the amount recovered from the Urban firm allocable to the Unrepresented Creditors. Since the Applicant's services rendered before October 15, 2018, in the category of "general services," were dedicated exclusively to recovering the Estate's property, regardless to which creditors the property was intended to be distributed, the Trustee was able to fulfill his duty to distribute bankruptcy dividends to both the creditors represented by the Applicant and the Unrepresented Creditors. Thus, in this Application, the Applicant seeks to utilize a ratio of 64% (hereafter "Ratio"), to the Applicant's fees for general services rendered and expenses incurred until October 15, 2018 in obtaining the Recovery Amount. By applying the Ratio, Applicant will not be overcompensated since the fees or expenses directly and solely incurred for distributing the dividend to the creditors represented by the Applicant in accordance with the Order of this Court dated October 15, 2018 are not addressed by this Application. The fee arrangement entered into by the Applicant with the creditors was based on small fixed amount (120 EUR to 150 EUR) and a percentage (2% to 5%) out of the distributed amount (2% to 5%).

Since the Applicant's actual expenses or hourly fees for recovering the entire Recovery Amount were directly not charged to the creditors the Applicant represented, fees invoiced to the creditors that the Applicant represents were insufficient to reimburse the Applicant for the services rendered and expenses incurred. Therefore, should the Court grant this supplemental fee application applying the Ratio to the fees and expenses incurred prior to October 15, 2018, this would not result in overcompensation of the Applicant.

**B. Fraudulent Transfer Litigation – avoidance suits in Germany, France and Switzerland – Enforcement Litigation Performed**

Applicant consulted with the Trustee and with Special Counsel Robert F. Elgidely, Esq. and pursued and supported the filing of approximately 200 avoidance actions in March, April and May 2010 in the U.S., France and Germany. Applicant granted legal and logistic support to the Trustee and to certain attorneys in Switzerland for the purpose of filing avoidance actions in Switzerland.

After the period of services covered by the First Interim Fee Application, hence after September 2010, the Applicant had pursued all pending German avoidance actions against net profiteers from Engler's ponzi scheme as laid out in detail in the First, Second and Final Fee Application. A few foreclosure proceedings in Germany and France are still pending, some of the opponents have filed for personal bankruptcy, some of them are currently imprisoned and cannot fulfill the judgements against them, one passed away so that an enforcement against his estate has become necessary and one of the opponents disappeared and is believed to have fled Germany.

Applicant has been successful in collecting on the account further settlement profits in favor of the Trustee to the amount of **1,739,432.73 EUR (US\$1,979,474.41)** that has been collected from defendants during the Application Period. Overall, Applicant was able to recover settlement amounts to the extent of **1,739,432.73 EUR (US\$1,977,733.84)** since their application for employment. The lump sum amount of 16,000 EUR (US\$18,192.00) was been forwarded to

the Trustee on April 29, 2019. An amount of **957,01 EUR (US\$1,088.12)** has been retained to continue the bank account and cover some bank fees in order to obtain further recovered funds to be deposited on the escrow account.

In connection with the attempts to enforce final fraudulent transfer judgments and settlements, voluminous information on the financial background of defendants was collected to ensure a most fruitful outcome.

In particular one enforcement case in France is currently still disputed and pending.

### **III. REIMBURSEMENT OF EXPENSES AND SERVICES**

As set forth in the preceding description and summary of the expenses and disbursements rendered, Applicant's expenses and disbursements are reflected in Exhibit 2 with a total of **36.739,69€ EUR (US\$ 41,773.03)** and further detailed in Exhibit 4 which the Applicant deems necessary and reasonable and for which the Applicant is seeking reimbursement for the amount of **17.190,89€ EUR (US\$ 19,546.04)** applying the Ratio explained above for expenses incurred prior to October 15, 2018 and the full amount of **19.548,80 € EUR (US\$ 22,296.99)** for expenses incurred after October 15, 2018.

### **IV. INDEXING OF TASKS BY ACTIVITY CODES**

As set forth in the preceding description and summary of the services performed, Applicant's services as reflected in the time records in Exhibit 1-B focused on **General Services and Enforcement Litigation.**

## V. EVALUATION OF SERVICES RENDERED

This Application presents the nature and extent of the professional services rendered by the Applicant in connection with its representation of the Trustee. The recitals set forth in the daily diaries attached hereto constitute only a summary of the time spent.

*American Benefit life Ins. Co. v. Baddock (In re First Colonial Corp.)*, 544 F.2d 1291 (5<sup>th</sup> Cir.), *cert. denied*, 431 U.S. 904 (1977), enumerates twelve factors a bankruptcy court should evaluate in awarding fees. *First Colonial* remains applicable in the Eleventh Circuit to the determination of reasonableness of fees to be awarded under the Bankruptcy Code. *Grant v. George Schuman Tire & Battery Company*, 908 F.2d 874 (11th Cir. 1990); 2 COLLIER ON BANKRUPTCY ¶ 330.05[2][a] at 330-33 through 330-37 (L. King 15th ed. 1991); see also *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981). The twelve factors are:

- i) The time and labor required;
- ii) The novelty and difficulty of the questions presented;
- iii) The skill required to perform the legal services properly;
- iv) The preclusion from other employment by the attorney due to acceptance of the case;
- v) The customary fee for similar work in the community;
- vi) Whether the fee is fixed or contingent;
- vii) The time limitations imposed by the client or circumstances;
- viii) The amount involved and results obtained;
- ix) The experience, reputation and ability of the attorneys;
- x) The undesirability of the case;
- xi) The nature and length of the professional relationship with the client; and
- xii) Awards in similar cases.

*First Colonial*, 544 F.2d at 1298-99.



Based upon the standards set forth in Sections 330 and 331 of the Bankruptcy Code as well as in *First Colonial*, the Applicant believes that the fair and reasonable value of its services rendered during the period covered by this Application is in the amount of **49,895,82 € (US\$ 56,731.55)**.

a) Time, Nature and Extent of Services Rendered, Results Obtained and Related First Colonial Factors

The foregoing summary, together with the exhibits attached hereto, details the time, nature and extent of the professional services the Applicant rendered for the benefit of the Trustee during the period covered by this Application. The total number of hours expended (**217.332**) reveals the time devoted in particular to the preparation of facts (research of personal and financial data of net profiteers, research and investigation of circumstances of the defendant's involvement in the scheme and of the relevant payments, their financial background as well as any sort of public registries and other necessary information for the establishment of the claims) and legal reasoning and background of the cause of action for the avoidance actions by the Applicant. The average hourly rate for the Applicant during the period covered by this Application is **331.38 € (374.80 US\$)**.

b) Novelty and Difficulty of Questions Presented

The Applicant and its retained law firm, Shumaker, took on the task of filing a motion for the return of property of the Estate in order to allow for an orderly distribution, consistent with this Court's prior Orders requiring distribution directly to creditors and so that the creditors could finally receive the distributions from these bankruptcy cases.

c) Skill Requisite to Perform Services Properly

In rendering services to the Trustee, Applicant respectfully submits that it endeavored to demonstrate legal skill and expertise in the areas of collection, bankruptcy and litigation. Applicant is the only major German bankruptcy law firm that has both an international department and substantial experience with cross-border insolvency cases. Dr. Annerose Tashiro, the head of Applicant's international department has broad experience with United States bankruptcy cases in particular.

d) Preclusion from Other Employment by Attorney Due to Acceptance of Case

The Applicant's representation in this case did not preclude it from accepting other employment.

e) Customary Fee

The customary hourly rate for the attorneys rendering services reflected in this Application are: Dr. Annerose Tashiro – 2017-2019: 390.00 EUR, Patrick Ehret – 2017-2019: 390.00 EUR, Ronan Dug e – 2017-2019: 250.00 EUR, Nathalie Ell – 2017-2019: 250.00 EUR, and Naila Alam 2017-2019: 250.00 EUR. The hourly rates of the Applicant set forth in the attached exhibits otherwise reflect the hourly rates the Applicant generally bills to its clients in other similar bankruptcy cases (except for legal services provided in direct connection with German court proceedings). This Court has approved these rates, as have other courts within and outside of this District, in other bankruptcy matters in which the Applicant and other counsel of like reputation and experience have been involved.

f) Whether Fee is Fixed or Contingent

Applicant's compensation in these matters is subject to Court approval and is therefore essentially contingent. This Court should consider this factor, which militates in favor of a fee in the amount requested. The amount requested is consistent with the fee which the Applicant would charge its clients in other non-contingent, bankruptcy cases.

g) Time Limitations Imposed by Client or Other Circumstances

The circumstances of this case did not impose unreasonable certain time constraints on the Applicant.

h) Experience, Reputation and Ability of Attorneys

The attorneys of the Applicant are well experienced in the recovery of assets fraudulently transferred out of a ponzi scheme, as detailed in the previous fee applications. However, the reputation and trust in the Applicant by the creditors over the course of these 10 year-long bankruptcy cases facilitated the procedure through which all creditors will finally receive their distributions.

i) “Undesirability” of Case

The Applicant is privileged to have had the opportunity to represent the Trustee and appear before this Court in these cases.

j) Nature and Length of Professional Relationship with Client

The Applicant has and continues to represent the Trustee in these cases.

k) Awards in Similar Cases

The amount requested by the Applicant is reasonable in terms of awards in cases of similar magnitude and complexity. The compensation which the Applicant requests comports with the mandate of the Bankruptcy Code and Rules, which directs that services be evaluated in light of comparable services performed in non-bankruptcy cases in the community. The fees requested by the Applicant reflect an average hourly rate of approximately **331.38 EUR€ (US\$376.78)**.

## VII. CONCLUSION

The Applicant has performed extensive and valuable services for the Trustee in these cases. For this reason and all of the reasons set forth in this Application, Applicant requests a final net award equal to **49.895,82€ (US\$56,731.55)** in fees and **36.739,69 € (US\$41,773.03)**, in

expenses for a total payment of **86.635,51 € (US\$98,504.57)**. Furthermore, Applicant reserves its right to supplement this Application prior to any hearing hereon.

WHEREFORE, the Applicant respectfully requests the Court to enter an Order (A) awarding the Applicant an final award equal to **49.895,82 EUR (US\$56,781.44)** in fees and **36.739,69 € (US\$41,809.77)** in expenses for a total payment of **86.635,51 € (US\$98,591.21)** and (B) granting such other and further relief as the Court deems appropriate.

Respectfully submitted,

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By: /s/ Annerose Tashiro  
Dr. Annerose Tashiro  
(Attorney at law in Germany)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on **June 28, 2019**, a true and correct copy of the Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses to Dr. Annerose Tashiro and the Law Firm of Schultze & Braun GmbH Rechtsanwalts-gesellschaft as Special Counsel for Chapter 7 Trustee, Robert E. Tardif, Jr. has been furnished electronically to the: **Assistant United States Trustee**, by regular U.S. Mail to **Ulrich Felix Anton Engler and Private Commercial Office, Inc.**, 1217 Cape Coral Parkway # 121, Cape Coral FL 33904, **Internal Revenue Service, Insolvency Unit/Special Procedures**, Post Office Box 17167, Stop 5760, Plantation, FL 33318, **United States Attorney General, U.S. Dept. of Justice, Tax Division**, Ben Franklin Station, Post Office Box 14198, Washington, DC 20044, **District Counsel, Internal Revenue Service**, 51 S.W. First Avenue, Room 1114, Miami, FL 33130, **United States Attorney's Office, Attn: Civil Process Clerk**, 400 North Tampa Street, Suite 3200, Tampa, FL 33602-4798, **Michael J. Kearns, Dept of Justice, Tax Division**, Post Office Box 14198, Washington DC 20044, **Internal Revenue Service**, Atlanta Service Center, P.O. Box 47-421, Doraville, GA 30362 and **Jonathan S. Fenn Revocable Trust, c/o C. Timothy Lindstrom**, P.O. Box 7622, Jackson, WY 83002, and by either regular U.S. Mail or electronic notice to all creditors and parties in interest according to the **Motion to Limit Notice (Doc No. 418) and Court's Order Granting Trustee's Motion to Establish Certain Notice, Case Management and Administrative Procedures (Doc. 451)**. The foregoing was not posted on the website "englerbk.com" as the website is no longer valid.

**SHUMAKER, LOOP & KENDRICK, LLP**

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