

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

In Re: ULRICH FELIX ANTON ENGLER, Case No. 9:08-bk-04360-ALP
Debtor. Chapter 7

CONGRO FINANZ AG AND PRIMUS GMBH'S COMPLIANCE WITH ORDER SCHEDULING PRELIMINARY HEARING ON MOTION FOR RELIEF FROM STAY (D.E. 28) AND REPLY TO OBJECTION BY CHAPTER 7 TRUSTEE (D.E. 24) TO MOTION FOR RELIEF FROM STAY FILED BY CONGRO FINANZ AG AND PRIMUS GMBH (D.E. 18) AND SUPPORTING MEMORANDUM OF LAW

Creditors, CONGRO FINANZ AG and PRIMUS GmbH, creditors herein, through their undersigned counsel hereby comply with the Court's Order Scheduling Preliminary Hearing on Motion for Relief from Stay (D.E. 28) paragraph 3 and reply to the Objection by Chapter 7 Trustee to Motion for Relief from Stay Filed by Congro Finanz AG and Primus GmbH (D.E. 24), objecting to Congro Finanz AG and Primus GmbH's Motion for Relief from Automatic Stay to Enforce Garnishment Lien and Seeking Other Relief with 21 Days Negative Notice and Supporting Memorandum of Law (D.E. 18) and state:

Background

1. Congro Finanz AG and Primus GmbH filed Congro Finanz AG and Primus GmbH's Motion for Relief from Automatic Stay to Enforce Garnishment Lien and Seeking Other Relief with 21 Days Negative Notice and Supporting Memorandum of Law (D.E. 18) on May 9, 2008. As of the date of this reply, the only timely objections were filed by the Chapter 7 Trustee (D.E. 24), the Petitioning Creditors (D.E. 20 and 23)

and Creditor Renate Zink (D.E. 27). On June 4, 2008, the Court entered its Order Overruling Creditor's Objection to Creditor Congro Finanz AG's and Primus GmbH's Motion to Lift Automatic Stay (D.E. 30).

2. The only objection properly before the Court is that of the trustee, whose objection adopts the arguments contained in the objection of the Petitioning Creditors and overruled objection of Creditor Renate Zink. The trustee's arguments are each addressed below.

Creditors lack standing

3. As already ruled upon by the Court, creditors, petitioning or otherwise, lack standing to exercise or enforce the avoidance powers of a trustee. The only party with standing to object to Primus GmbH and Congro Finanz AG's requested relief on the basis of the trustee's avoidance power is the trustee. Both 11 U.S.C. §§ 545 and 547 expressly state that the trustee, not debtors or creditors, may avoid certain liens under certain circumstances. "In general, as well as under § 549, only trustees and debtors-in-possession, not creditors, have standing to invoke avoidance powers." *City of Farmers Branch v. Pointer*, 952 F. 2d 82, 87 (5th Cir. 1992). See also *In re: Hacker*, 252 B.R. 221, 223 (Bankr.M.D.Fla. 2000) and cases cited therein.

11 U.S.C. § 545 does not provide basis for avoidance

4. In *In re: Giles*, 271 B.R. 903, 905-906 (Bankr.M.D.Fla. 2002)¹, the Court

¹ In *In re: Giles*, 271 B.R. 903, 904 (Bankr.M.D.Fla. 2002), the petition was filed on December 11, 2001, and the writ of garnishment was served December 7, 2001, four days prior to the petition filing date. The Court sets forth the legislative history and intent in enacting the amendment to Florida's garnishment law.

succinctly sets forth the history of Florida's garnishment statute and the July 1, 2000, amendment thereto which specifically overrules the result of prior case law. Since July 1, 2000, the service of a writ of garnishment creates a lien in or upon any such debts or property at the time of service of the writ. "Under this amendment, the service of a writ of garnishment will create a lien upon the funds or property belonging to a debtor in the hands of a third party garnishee that will establish the creditor's priority, thus altering the result the court reached in *Masvidal*."

5. A virtually identical case to the case at bar is *In re: Marineau*, 19 Fla. L. Weekly Fed. B 247 (Bankr.S.D.Fla. 2006) case number 06-10619-JKO. In *Marineau*, the creditor served a writ of garnishment on February 10, 2006, two weeks prior to the February 24, 2006, petition date. The Court goes through a thorough step by step analysis of the applicable code sections and Florida law, concluding that Florida garnishment liens are not avoidable under 11 U.S.C. § 545, holding that any potential avoidability argument based upon 11 U.S.C. § 547 must be brought via a proper adversary proceeding, and ordering "creditor has complete relief from the automatic stay imposed by 11 U.S.C. § 362 and may complete its state court garnishment action."

6. In drafting 11 U.S.C. §§ 545 and 546 as it did, Congress largely left the avoidability of statutory liens to state law. See *Stanford v. Butler*, 826 F. 2d 353, 355 (5th Cir. 1987). A plain reading of 11 U.S.C. § 545, Statutory liens, makes clear that it contains no language which empowers the trustee, or anyone else, to avoid the statutory lien created by a duly served Florida writ of garnishment.

7. A plain reading of 11 U.S.C. § 547, Preferences, likewise makes clear that

it contains no language which empowers the trustee, or anyone else, to avoid the statutory lien created by a duly served Florida writ of garnishment. Moreover, 11 U.S.C. § 547 affirmatively states in relevant part:

(c) The trustee may not avoid under this section a transfer - * * *

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title; * * *

8. The Florida legislature amended the Florida garnishment statute effective July 1, 2000, by adding the underlined language to Florida Statutes § 77.06(1):

Service of the writ shall make garnishee liable for all debts due by him or her to defendant and for any tangible or intangible personal property of defendant in the garnishee's possession or control at the time of the service of the writ or at any time between the service and the time of the garnishee's answer. Service of the writ creates a lien in or upon any such debts or property at the time of service or at the time such debts or property come into the garnishee's possession or control.

The purpose of the amendment is to specifically overrule the prior case law and to prevent the exact result being sought by the trustee in the instant case. See *In re: Giles*, 271 B.R. 903, 905 (Bankr.M.D.Fla. 2002).

9. The law is clear that since July 1, 2000, a pre-petition served Florida Writ of Garnishment creates a lien in or upon any debts or property of the debtor and is not avoidable by the trustee, a creditor or a debtor. As set forth in more detail in *Congro Finanz AG and Primus GmbH's Motion for Relief from Automatic Stay* (D.E. 18), *Congro Finanz AG and Primus GmbH* are entitled to the requested relief.

Petitioning Creditors' Case Law is Misleading

10. Respectfully, the case law cited by the Petitioning Creditors is, at best,

misleading. *In re: Hacker*, 252 B.R. 221 (Bankr.M.D.Fla. 2000) was decided July 12, 2000, and grants summary judgment in favor of the creditor, finding that there is no issue as to a preferential transfer because 11 U.S.C. § 547 is inapplicable to the facts of that case. *In re: M.D.F. Inc.*, 39 B.R. 16 (Bankr.S.D.Fla. 1984) is a pre-July 1, 2000, decision, does not comport with the current versions of 11 U.S.C. §§ 545 and 547, and was expressly disagreed with in *In re: Masvidal*, 10 F. 3d 761 (11th Cir. 1993), which decision has itself been superseded by statute as discussed above.

Trustee's Arguments are Unavailing

11. Paragraph 1 of the Trustee's objection is addressed above.

12. Paragraph 2 of the Trustee's objection fails to cite any factual or legal basis.

The law is well settled that "a return of service which is regular on its face is presumed valid unless clear and convincing evidence is presented to the contrary." *TS Production, LLC, v. Leadracer.com, Inc.*, 2007 WL 4277535 (M.D. Fla. 2007) Case No. 8:07-cv-686-T-24-EAJ citing *Lazo v. Bill Swad Leasing Co*, 548 So. 2d 1194, 1195 (Fla. 4th DCA 1989)²; *Florida National Bank v. Halphen*, 641 So. 2d 495, 496 (Fla. 3d DCA 1994) (A party denying service "cannot impeach a summons by simply denying service, but must present 'clear and convincing evidence' to corroborate his denial of service.") citing *Lazo*.

13. Paragraph 3 of the Trustee's objection fails to cite any factual or legal basis.

Moreover, the legal basis for the status of the Idaho liens is set forth in paragraphs 20-22 of Congro Finanz AG and Primus GmbH's Motion for Relief from Automatic Stay to Enforce Garnishment Lien and Seeking Other Relief with 21 Days Negative Notice and Supporting Memorandum of Law (D.E. 18).

14. Paragraph 4 of the Trustee's objection fails to cite any factual or legal basis. Moreover, the trustee mischaracterizes the writs of garnishment as a "shotgun approach" – nothing could be further from the truth. As the docket indicates in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, for Case No. 2007-CA-14111 ("Case 14111") and Case No. 2008-CA-00855 ("Case 00855"), Congro Finanz AG and Primus GmbH have been diligently pursuing discovery in aid of execution and have served multiple writs of garnishment based upon the facts and the discovery responses. The trustee inappropriately characterizes the pre-petition efforts as something the "Court cannot sanction." Congro Finanz AG and Primus GmbH are seeking nothing more than the enforcement of the applicable laws and enforcement of their right to pursue the funds upon which they have a superior statutory unavoidable lien.

15. Paragraph 5 of the Trustee's objection fails to cite any factual or legal basis. However, to the extent that the Court disagrees with the United States District Court for the Middle District of Florida Case No. 2:08-cv-81-FtM-29DNF Judge's April 29, 2008, order which provides, *inter alia*, that "the Court finds that a stay of this case would not be

² Clear and convincing evidence requires that the witness to a fact be credible; the facts testified to must be distinctly remembered; the details must be narrated exactly and in order; testimony must be clear, direct and weighty; and the witness must be lacking in confusion as to the facts in issue. *Lazo* at 1195 citing *Slomowitz v. Walker*, 429 So. 2d

required or appropriate during the pendency of the bankruptcy,” Congro Finanz AG and Primus GmbH respectfully take the position that the trustee should retain counsel to assume all responsibility for that case. Alternatively, Congro Finanz AG and Primus GmbH request that the Court allow them to continue or drop that litigation, as they see fit. However, Congro Finanz AG and Primus GmbH maintain that it would be inequitable to allow them to continue with the litigation if their efforts will ultimately inure to the benefit of the trustee.

16. Paragraph 6 of the Trustee’s objection effectively concedes the propriety of Congro Finanz AG and Primus GmbH’s position that their pre-petition served writs of garnishment are unavoidable liens. Congro Finanz AG and Primus GmbH agree with the trustee that any funds that may have been transferred into the accounts of the garnishees post-petition are properly the property of the estate. Congro Finanz AG and Primus GmbH only seek to collect any funds, or other property, that were in the accounts or otherwise in the possession of the garnishees at the time of service of the writs.

Compliance with Court’s Order Scheduling Hearing (D.E. 23)

17. As directed by the Court, Congro Finanz AG and Primus GmbH provide the following information on the total amount due and will address the status and property related to each writ of garnishment. Congro Finanz AG and Primus GmbH maintain that the adequate protection is to allow them to pursue their lawful right to collect and retain the funds subject to the writs of garnishment set forth below to the extent necessary to fully satisfy their judgments.

797, 799 (Fla. 4th DCA 1983).

18. The Case 14111 Final Judgment was entered on November 28, 2007, in the amount of \$3,957,427.30 and bears interest at the statutory rate of 11 percent per annum. The amount due as of June 26, 2008, is \$4,209,076.31 (the principal amount of \$3,957,427.30 plus post-judgment interest through June 26, 2008, of \$251,649.01), with a per diem of \$1,192.65 for each day thereafter.

19. The Case 00855 Final Judgment was entered on February 13, 2008, in the amount of \$30,784,406.67 and bears interest at the statutory rate of 11 percent per annum. The amount due as of June 26, 2008, is \$32,027,590.65 (the principal amount of \$30,784,406.67 plus post-judgment interest through June 26, 2008, of \$1,243,183.98), with a per diem of \$9,277.49 for each day thereafter.

20. Addressing each writ of garnishment in the order listed in and attached to Congro Finanz AG and Primus GmbH's Motion for Relief from Automatic Stay to Enforce Garnishment Lien and Seeking Other Relief with 21 Days Negative Notice and Supporting Memorandum of Law (D.E. 18), providing a description of the property and how the value should be determined is as follows:

21. In Case 14111, on December 31, 2007, a Writ of Garnishment was issued naming Autoquest of Southwest Florida, Inc., as garnishee and was duly served on January 4, 2008. The property consists of \$350,000.00 which is being held in the trust account of Urban Thier Federer & Jackson, P.A. In addition, the property consists of a promissory note in the amount of \$1,500,000.00 due in 2013. The transfers to Autoquest of Southwest Florida, Inc. are listed below and copies are attached as composite Exhibit 1:

September 14, 2005	check 1492	\$131,680.80
April 21, 2006	check 1499	\$173,160.80
October 7, 2006	check 1264	\$150,000.00
January 29, 2007	check 501	\$128,606.80
February 13, 2007	check 502	\$1,500,000.00
May 18, 2007	transaction 070518-3920	\$400,000.00

22. Congro Finanz AG and Primus GmbH request relief from the automatic stay to retain the \$350,000.00 currently contained in the undersigned counsel's trust account, to continue efforts to collect the \$1,500,000.00 transferred to the garnishee on February 13, 2007, and to collect any other amounts in the possession of the garnishee at the time of service of the writ of garnishment.

23. In Case 14111, on January 16, 2008, a Writ of Garnishment was issued naming US National Payphone Administration, Inc., as garnishee and was duly served on January 17, 2008. US National Payphone Administration, Inc. failed to answer the Writ of Garnishment and a Default Final Judgment was entered on February 20, 2008. On February 20, 2008, a Writ of Garnishment was issued naming SunTrust Bank, as garnishee and was duly served on February 20, 2008. The property consists of \$407,766.95 which is being held in the trust account of Urban Thier Federer & Jackson, P.A. Pursuant to a previous Writ of Garnishment served on Bank of America by JP Morgan, Bank of America is withholding an additional \$41,000.00 which is due to Congro Finanz AG and Primus GmbH once a Final Judgment is entered in the separate garnishment proceeding regarding JP Morgan. The transfers to US National Payphone Administration, Inc. are listed below and copies are attached as composite Exhibit 2:

July 5, 2005	transaction 050705-3970	\$100,000.00
June 5, 2006	transaction 060605-2028	\$376,005.73

24. Congro Finanz AG and Primus GmbH request relief from the automatic stay to retain the \$407,766.95 currently contained in the undersigned counsel's trust account, to continue efforts to collect the \$41,000.00 once the JP Morgan Writ of Garnishment is satisfied, and to collect any other amounts in the possession of the garnishee at the time of service of the writ of garnishment.

25. In Case 14111, on January 16, 2008, a Writ of Garnishment was issued naming Freecall Technologies, Inc., as garnishee and was duly served on January 22, 2008. Freecall Technologies, Inc. failed to answer the Writ of Garnishment and a Default Final Judgment was entered on February 20, 2008. On February 20, 2008, a Writ of Garnishment was issued naming Bank of America, as garnishee and was duly served on February 20, 2008. The property consists of \$986,085.14 which is being held in the trust account of Urban Thier Federer & Jackson, P.A. The transfers to Freecall Technologies, Inc. are listed below and copies are attached as composite Exhibit 3:

January 24, 2006	transaction 060124-2585	\$300,000.00
April 13, 2006	transaction 060413-5181	\$500,000.00
May 10, 2006	transaction 060510-4963	\$377,994.76
June 2, 2006	transaction 060602-3413	\$399,203.88
July 12, 2007	transaction 070713-138	\$611,000.00

26. Congro Finanz AG and Primus GmbH request relief from the automatic stay to retain the \$986,085.14 currently contained in the undersigned counsel's trust account and to collect any other amounts in the possession of the garnishee at the time of service of the writ of garnishment.

27. In Case 14111, on February 12, 2008, a Writ of Garnishment was issued

naming Rad Management, Inc., as garnishee and was duly served on February 15, 2008. On February 20, 2008, the garnishee answered that it was not indebted to the debtor and Congro Finanz AG and Primus GmbH replied on March 10, 2008, denying the answer. Congro Finanz AG and Primus GmbH request relief from the automatic stay to pursue the garnishee and to collect any other amounts in the possession of the garnishee at the time of service of the writ of garnishment. Copies are attached as composite Exhibit 4.

28. In Case 14111, on February 15, 2008, a Writ of Garnishment was issued naming Bank of America Corporation as garnishee and was duly served on February 15, 2008. On March 5, 2008, the garnishee answered that it was not indebted to the debtor. Copies are attached as composite Exhibit 5.

29. In Case 00855, on February 25, 2008, a Writ of Garnishment was issued naming Freecall Technologies, Inc., as garnishee and was duly served on February 27, 2008. Freecall Technologies, Inc. failed to answer the Writ of Garnishment and a Default Final Judgment was entered on March 28, 2008. Copies are attached as composite Exhibit 6. Congro Finanz AG and Primus GmbH request relief from the automatic stay to collect any other amounts in the possession of the garnishee at the time of service of the writ of garnishment.

30. In Case 00855, on February 25, 2008, a Writ of Garnishment was issued naming US National Payphone Administration, Inc., as garnishee and was duly served on February 26, 2008. Copies are attached as composite Exhibit 7. Congro Finanz AG and Primus GmbH request relief from the automatic stay to pursue a default final judgment against US National Payphone Administration, Inc., and to collect any other amounts in

the possession of the garnishee at the time of service of the writ of garnishment.

31. In Case 00855, on March 10, 2008, a Writ of Garnishment was issued naming Hubert Engler as garnishee and was duly served on March 13, 2008. Congro Finanz AG and Primus GmbH believe the property to consist of \$590,447.69 which is being held in a SunTrust bank account. The transfers to Hubert Engler are listed below and copies are attached as composite Exhibit 8:

March 13, 2006	check 1265	\$190,000.00
May 10, 2006	transaction 060510-9301	\$215,892.05
June 5, 2006	transaction 060605-1898	\$184,555.64

32. Hubert Engler failed to answer the Writ of Garnishment and a Default Final Judgment was entered on April 11, 2008. Congro Finanz AG and Primus GmbH request relief from the automatic stay to collect any amounts in the possession of the garnishee at the time of service of the writ of garnishment, including, but not limited to, any funds being held by SunTrust Bank on behalf of the Garnishee. Copies are attached as composite Exhibit 8.

33. In Case 00855, on March 10, 2008, a Writ of Garnishment was issued naming Roswitha App as garnishee and was duly served on March 13, 2008. Congro Finanz AG and Primus GmbH believe the property to consist of \$511,831.57 which is being held in a SunTrust bank account. The transfers to Roswitha App are listed below and copies are attached as composite Exhibit 9:

June 10, 2005	check 1489	\$100,000.00
May 10, 2006	transaction 060510-9235	\$223,786.23
June 5, 2006	transaction 060605-1886	\$188,045.34

34. Roswitha App failed to answer the Writ of Garnishment and a Default Final

Judgment was entered on April 11, 2008. Congro Finanz AG and Primus GmbH request relief from the automatic stay to collect any amounts in the possession of the garnishee at the time of service of the writ of garnishment, including, but not limited to, any funds being held by SunTrust Bank on behalf of the Garnishee. Copies are attached as composite Exhibit 9.

35. In Case 00855, on March 13, 2008, a Writ of Garnishment was issued naming Gavin Riches as garnishee and was duly served on March 19, 2008. On March 21, 2008, the garnishee answered that he was not indebted to the debtor. Congro Finanz AG and Primus GmbH request relief from the automatic stay to pursue the garnishee and to collect any amounts in the possession of the garnishee at the time of service of the writ of garnishment. Copies are attached as composite Exhibit 10.

36. In Case 00855, on March 13, 2008, a Writ of Garnishment was issued naming Deborah Muller as garnishee and was duly served on March 19, 2008. On March 24, 2008, the garnishee answered that she was not indebted to the debtor. Congro Finanz AG and Primus GmbH request relief from the automatic stay to pursue the garnishee and to collect any amounts in the possession of the garnishee at the time of service of the writ of garnishment. Copies are attached as composite Exhibit 11.

37. On January 15, 2008, a Notice of Filing Foreign Judgment, domesticating in the State of Idaho the Final Judgment in Case 14111, was filed in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, Case No. CV 08-019 (the "Idaho Case") and a Writ of Execution were issued by the Idaho Clerk of Court on February 1, 2008. On March 18, 2008, David B. Douglas and Douglas

Investments, LLC, accepted service of, inter alia, a Notice of Garnishment in the Idaho Case. The property consists of \$41,055,000.00 which is being held by David Douglas and Douglas Investments, LLC. The transfers to Douglas Investments, LLC, and David Douglas are listed below and copies are attached as composite Exhibit 12:

August 3, 2006	check 1274	\$ 535,000.00
August 3, 2006	check 1278	\$5,300,000.00
August 23, 2006	check 1277	\$3,000,000.00
June 26, 2007	check 1317	\$2,000,000.00
December 12, 2006	transaction 061212-3052	\$2,500,000.00
January 5, 2007	transaction 070105-1886	\$3,680,000.00
January 5, 2007	transaction 070105-2088	\$2,700,000.00
January 5, 2007	transaction 070105-2352	\$1,100,000.00
February 8, 2007	transaction 070208-9313	\$4,000,000.00
February 12, 2007	transaction 070212-145	\$4,000,000.00
April 3, 2007	transaction 070403-15842	\$4,000,000.00
July 16, 2007	transaction 070716-82	\$4,000,000.00
July 16, 2007	transaction 070716-12048	\$4,000,000.00
January 2, 2007	transaction 070102-8332	\$1,120,000.00
January 2, 2007	transaction 070102-8355	\$ 120,000.00
August 2, 2007	check 18955	\$ 100,000.00

38. Congro Finanz AG and Primus GmbH request relief from the automatic stay to continue efforts to collect the balance owed on the Case 14111 November 28, 2007, Final Judgment and to collect any other amounts in the possession of the garnishee at the time of service of the writ of garnishment up to the amount necessary to fully satisfy the Case 14111 Final Judgment.

39. On January 3, 2008, as part of their efforts to execute the Case 14111 final judgment, Congro Finanz AG and Primus GmbH filed a lawsuit against Douglas Investments, LLC, in the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County, Florida, Case No. 2008-CA-0019 (“Case 0019”). On January 29, 2008,

Case 0019 was removed to the United States District Court for the Middle District of Florida and assigned Case No. 2:08-cv-81-FtM-29DNF. The property consists of the following 4 parcels of real property valued at a total of \$434,223.00 according to the Charlotte County Property Appraiser:

- a) 1405 San Cristobal Avenue, Punta Gorda, Florida 33983
Parcel Identification Number 402309453001
Value \$84,156.00 (Charlotte County Property Appraiser)
- b) 1462 Rio De Janeiro Avenue, Unit 101, Punta Gorda, Florida 33983
Parcel Identification Number 402309777002
Value \$110,628.00 (Charlotte County Property Appraiser)
- c) 1462 Rio De Janeiro Avenue, Unit 203, Punta Gorda, Florida 33983
Parcel Identification Number 402309777007
Value \$127,749.00 (Charlotte County Property Appraiser)
- d) 1462 Rio De Janeiro Avenue, Unit 202, Punta Gorda, Florida 33983
Parcel Identification Number 402309777014
Value \$111,690.00 (Charlotte County Property Appraiser)

Copies of the deeds are attached as composite Exhibit 13.

40. Congro Finanz AG and Primus GmbH request relief from the automatic stay to continue efforts to collect the balance owed on the Case 14111 February 13, 2008, Final Judgment. To the extent the Court finds that this cause of action belongs to the trustee and bankruptcy estate, Congro Finanz AG and Primus GmbH request that the Court direct the trustee to assume all responsibility for prosecution of Case No. 2:08-cv-81-FtM-29DNF and allow for substitution of the trustee in place of Congro Finanz AG and Primus GmbH.

WHEREFORE Congro Finanz AG and Primus GmbH respectfully request that 1) they be granted the relief requested in Congro Finanz AG and Primus GmbH's Motion for Relief from Automatic Stay to Enforce Garnishment Lien and Seeking Other Relief with

21 Days Negative Notice and Supporting Memorandum of Law (D.E. 18); 2) that the Court grant the requested relief as a matter of law; 3) that the Objection by Chapter 7 Trustee to Motion for Relief from Stay Filed by Congro Finanz AG and Primus GmbH (D.E. 19) and the objection by the Petitioning Creditors (D.E. 20 and 23) be overruled; and 4) that the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ John L. Urban

John L. Urban, Esq.

Fla. Bar No. 0175307

URBAN THIER FEDERER

& JACKSON, P.A.

Attorneys for Congro Finanz AG & Primus GmbH

200 S. Orange Avenue, Suite 2025

Orlando, Florida 32801

Tel. 407-245-8352

Fax. 407-245-8361

Email urban@urbanthier.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by electronic transmission, if ECF filer, or served by first class US Mail, postage prepaid, on this Tuesday, June 10, 2008, to the following.

Ulrich Engler
1217 Cape Coral Parkway, # 121
Cape Coral, FL 33904

Private Commercial Office, Inc.
1217 Cape Coral Parkway, # 121
Cape Coral, FL 33904

U.S. Trustee – FTM7, 7
Office of the U.S. Trustee
Timberlake Annex, Suite 1200
501 E. Polk Street
Tampa, FL 33602

Robert E. Tardif, Trustee
2430 Shadowlawn Drive, Suite 18
Naples, FL 34112

Ronald Neiwirth, Esq.
Fowler White, et al.
1395 Brickell Avenue, 14th Floor
Miami, FL 33131

Peter H. Levitt
Shutts & Bowen LLP
201 South Biscayne Blvd., Suite 1500
Miami, FL 33131

Robert F. Elgidely, Esq.
Genovese Joblove & Battista, P.A.
100 Southeast Second Street
Miami, FL 33131

Roberta A. Colton, Esq.
Trenam, Kemker, et al.
P.O. Box 1102
Tampa, FL 33601

U.S. Trustee – TPA7
Office of the U.S. Trustee
Timberlake Annex, Suite 1200
501 E. Polk Street
Tampa, FL 33602

Helge Naber, Esq.
Naber PC
300 Central Avenue, Suite 320
Great Falls, Montana 59401

By: /s/ John L. Urban
John L. Urban