

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re CASE NO. 9:08-bk-04360-ALP
ULRICH FELIX ANTON ENGLER, et al., CHAPTER 7
Debtors. (Substantively Consolidated)

OMNIBUS MOTION TO APPROVE COMPROMISE OF CONTROVERSIES

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4(a)(5), the Court will consider this Motion without further notice or hearing unless a party in interest files an objection within 21 days from the date this Motion is entered on the docket. If you object to the relief requested in this Motion, you must file your objection with the Clerk of the Court at Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Suite 555, Tampa, Florida 33602 and serve a copy on the Trustee's attorney, Robert F. Elgidely, Esq., Genovese, Joblove & Battista, P.A., 200 East Broward Boulevard, Suite 1110, Fort Lauderdale, Florida 33301, and a copy on the Office of the United States Trustee, 501 East Polk Street, Suite 1200, Tampa, Florida 33602.

If you file and serve an objection to this Motion within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection to this Motion within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in this Motion, will proceed to consider the Motion without further notice or hearing and may grant the relief requested.

ROBERT E. TARDIF, JR. (hereinafter 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. (hereinafter referred to collectively as the "Debtors"), hereby files his Omnibus Motion To Approve Compromise Of Controversies pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019(a), and states in support thereof as follows:

1. The above-captioned bankruptcy cases were commenced by involuntary petition on March 31, 2008 (hereinafter the “Petition Date”) and Orders for Relief were entered against the Debtors on April 29, 2008.

2. The assets and liabilities of the Debtors’ bankruptcy estates were substantively consolidated by orders entered on June 24, 2008 and April 23, 2010.

3. As a result of a forensic accounting analysis conducted by the court-appointed accountants, the Trustee issued pre-suit demand letters for the return of avoidable transfers and filed hundred of avoidance actions with this Court and several courts throughout Europe (hereinafter referred to collectively as the “Avoidance Claims”).

4. Following assertion of the Avoidance Claims, the Trustee and certain of the transferees communicated and exchanged additional documentation concerning the claims, defenses, and correct amount of the transfers.

5. As a result of the Trustee’s assertion of the Avoidance Claims, communications and document exchanges, the Trustee has agreed to resolve certain of the Avoidance Claims reflected on the attached Exhibit A subject to court approval. True and correct copies of the settlement agreements are attached hereto as Composite Exhibit B and are incorporated herein by this reference.¹

6. Section 105(a) of Title 11 of the United States Code (hereinafter the “Bankruptcy Code”) provides in pertinent part that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

¹ Copies of the settlement agreements have been filed with the Court and are available to other creditors and parties in interest upon request to the Trustee or undersigned counsel.

7. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, which governs the approval of compromises and settlements, provides that “[o]n motion by the trustee and after notice and a hearing, a court may approve a compromise or settlement.”

8. A starting point in analyzing any proposed settlement agreement is the general policy of encouraging settlements and favoring compromises. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996).

9. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *In re Carson*, 82 B.R. 847 (Bankr. S.D. Oh. 1987); and *In re Mobile Air Drilling Co.*, 53 B.R. 605 (Bankr. N.D. Oh. 1985).

10. In passing on proposed settlements, the standard that courts applied under the former Bankruptcy Act is the same standard as courts should apply under the Bankruptcy Code. *In re Carla Leather, Inc.*, 44 B.R. 457, 466 (Bankr. S.D.N.Y. 1984).

11. As stated by the United States Supreme Court in *Protective Committee v. Anderson*, 300 U.S. 414, 424 (1968), under the Act, to approve a proposed settlement, a court must find that the settlement was “fair and equitable” based on an educated estimate of the complexity, expense, and likely duration of . . . litigation, the possible difficulties of collecting on any judgment which might be obtained and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

12. This test was adopted by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), which provides additional guidance as to whether a compromise should be approved. *Justice Oaks* established the following four-part test for approval:

- (a) The probability of success in litigation;
- (b) The difficulties, if any, to be encountered in the matter of collection;
- (c) The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- (d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

13. Under the well-established standard for consideration of the merits of a settlement, in determining whether to approve a proposed settlement, a bankruptcy court need not decide the numerous issues of law and fact raised by the settlement, but rather should “canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’” *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *In re World Health Alternatives, Inc.*, 344 B.R. at 296; and *In re Key3Media Group, Inc.*, 336 B.R. 87, 92-93 (Bankr. D. Del. 2005)).

14. The proposed settlements between the Trustee and the transferees identified on the attached Exhibit A would allow the Trustee to avoid the additional expense, inconvenience and delay associated with continuing litigation and gives the Trustee an opportunity to settle such claims on favorable terms to the Debtors’ bankruptcy estates.

15. Applying the foregoing standards, the Trustee respectfully submits that the proposed settlements with the transferees identified on the attached Exhibit A are fair, reasonable, in the best interests of the Debtors’ bankruptcy estates and creditors, and should be approved pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019(a).

WHEREFORE, the Trustee respectfully requests this Honorable Court to enter an Order granting this Omnibus Motion To Approve Compromise Of Controversies, approving the settlements with the transferees identified on the attached Exhibit A, and providing such other and further relief as the Court may deem just and proper.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for the Trustee
200 East Broward Boulevard, Suite 1110
Fort Lauderdale, Florida 33301
Telephone: (954) 453-8000
Telecopier: (954) 453-8010

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.
Florida Bar No. 111856

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Trustee's Omnibus Motion To Approve Compromise Of Controversies has been furnished by the Court's CM/ECF System and/or first class mail to all parties identified on the attached Service List, on the 23rd day of June, 2010.

By: /s/ Robert F. Elgidely
Robert F. Elgidely, Esq.

EXHIBIT A**SETTLEMENT AGREEMENT CHART**

Defendant	Settlement Amount	Amount in dispute¹
Eberhard Holzer Lehenweg 11 97332 Volkach Germany	USD 250,000	USD 529,217.50
Dominik Ruge Köblerweg 21 76229 Karlsruhe Germany	EUR 3,409.84	EUR 4,546.45
Christian Steffen S&P Assekuranzmakler GmbH Ottostr. 1 76275 Ettlingen Germany	USD 80,000	USD 164,723.86
Ralf Putt Ziegelhüttenstr. 4 64385 Reichelsheim Germany	EUR 17,500	EUR 77,727.65
Annemarie Putt Ziegelhüttenstr. 4 64385 Reichelsheim Germany	EUR 17,500	EUR 80,522.96
Dr. Gunther Wunsche Am Alpengarten 9 88131 Lindau Germany	EUR 4,828.74 (=USD 5,917.62)	USD 9,325.68
Gabriele Knips Am Tuermchen 43 35745 Herborn Germany	USD 1,262.12	USD 1,682.83

¹ Upon further investigation and additional evidence provided to the Trustee, the initial Settlement Amounts were revised and corrected to best reflect the true amount in dispute.

Defendant	Settlement Amount	Amount in dispute¹
Michael Duffner Lerchenweg 1 76307 Karlsbad Germany	USD 3,000	USD 10,142.57
Jurgen Kraemer Im Scheuring 32 56736 Kottenheim Germany	EUR 17,807.31	EUR 43,980.50
Peter Wendt Luttelforster-Weg 25 41366 Schwalmatal Germany	EUR 5,000.00	EUR 5,000.00
Engelbert J. M. Enste Vor der Nuck 21 56729 Langscheid Germany	EUR 2,000.00	EUR 4,303.63
Heiko Martin Am Rain 17 76287 Rheinstetten Germany	EUR 2,000.00	EUR 5,952.98
Plan One Architechts (Plain One Architects) c/o Paul Thanasides, Esq. McIntyre, Panzarella, Thanasides, Eleff & Hoffman, P.L. 6943 East Fowler Avenue Tampa, Florida 33617	USD 4,000.00 No settlement agreement prepared/executed.	USD 20,000.00