

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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**MOTION TO APPROVE COMPROMISE OF CONTROVERSY  
AND SETTLEMENT BETWEEN THE TRUSTEE, FIDELITY NATIONAL  
FINANCIAL, INC., AND FIDELITY NATIONAL TIMBER RESOURCES, INC.**

**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 sometimes referred to individually as "Engler," "PCO," and "PCOM," respectively, or collectively as the "Debtors"), hereby files his Motion To Approve Compromise Of Controversy And

Settlement Between The Trustee, Fidelity National Financial, Inc., and Fidelity National Timber Resources, Inc., pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019(a), and states in support thereof as follows:

1. 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 (hereinafter the “Bankruptcy Code”) against Engler and PCO (hereinafter the “Initial Debtors”) with the Clerk of this Court.<sup>1</sup>

2. On April 29, 2008, the Court entered Orders for Relief against the Initial Debtors.

3. On April 30, 2008, the Trustee was appointed as Interim Trustee for the Initial Debtors’ bankruptcy estates and now serves as the permanent Chapter 7 Trustee for the Debtors’ bankruptcy estates.

4. On June 24, 2008, the Court entered an Order substantively consolidating the assets and liabilities of the Initial Debtors’ bankruptcy estates.

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

6. 1,221 Proofs of Claim in the aggregate amount of \$312,999,841.01 have been filed in the Engler bankruptcy case and 210 Proofs of Claim in the aggregate amount of \$205,085,382.63 have been filed in the PCO bankruptcy case.

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<sup>1</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. Engler is currently a fugitive of justice.

7. On or about May 7, 2010, the Debtors' bankruptcy estates obtained fee simple title to 230 acres of real property commonly referred to as the Parkinson Seed Farm located in Madison County, Idaho (hereinafter the "Parkinson Property") in connection with the settlement of a lawsuit commenced by the Trustee against David Douglas, Debra Douglas, Douglas Investments, LLC, Deep Creek Developments I, LC, and Deep Creek Developments II, LLC, Adversary Proceeding Case Number 9:09-ap-00632-ALP [D.E. Nos. 166 and 230] (hereinafter the "Douglas Adversary").

8. The Parkinson Property is adjacent to 3,000 acres of dry farm land property commonly referred to as the Linderman Ranch in Teton and Madison Counties, Idaho (hereinafter the "Linderman Ranch") owned by Fidelity National Timber Resources, Inc. (hereinafter "Fidelity Timber") and is a valuable source of water rights for the Linderman Ranch.

9. On December 28, 2009, the Trustee filed a lawsuit against Fidelity National Financial, Inc. and Fidelity Timber (hereinafter referred to collectively as the "Fidelity Defendants") to recover transfers made by the Debtors in the approximate amount of \$11,757,750.00 pursuant to a contract for deed for the purchase of the Linderman Ranch for \$20 Million, Adversary Proceeding Case Number 9:09-ap-01026-MGW (hereinafter the "Fidelity Adversary").

10. Since the Fidelity Defendants vigorously disputed their liability for the claims asserted by the Trustee, the parties engaged in motion practice, exchanged voluminous documents, and conducted more than 10 depositions in Florida, Idaho, Wyoming, California, Montana, and Illinois.

11. The parties filed competing motions for summary judgment on July 30, 2010, the summary judgment hearing was scheduled for September 1, 2010, and trial would have commenced on October 4, 2010 if the motions had been denied.

12. Following mediation conducted on August 30 and 31, 2010, the parties entered into a Term Sheet reflecting the material terms of a settlement of the Fidelity Adversary which are summarized as follows:<sup>2</sup>

(a) the Fidelity Defendants<sup>3</sup> will pay \$550,000.00 to the Debtors' bankruptcy estates within thirty calendar days of execution of a settlement agreement;

(b) the Trustee will convey fee simple title to the Parkinson Property to the Fidelity Defendants so that the Parkinson Property and the Linderman Ranch can be jointly listed for sale by Richard "Alex" Maher of Live Water Properties, LLC;

(c) the Fidelity Defendants will pay all real estate taxes, insurance, and other related costs of maintaining the Parkinson Property after it is conveyed to them by the Trustee (collectively, the "Preservation Expenses");

(d) Upon a sale of the Parkinson Property and/or the Linderman Ranch, the Debtors' bankruptcy estates would be entitled to thirty five percent (35%) of the sales proceeds less the Preservation Expenses and the Fidelity Defendants would be entitled to sixty five percent (65%) of the sales proceeds;<sup>4</sup>

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<sup>2</sup> A true and correct copy of the Term Sheet is attached hereto as Exhibit "A" and is incorporated herein by this reference. To the extent there is any inconsistency between the settlement terms contained in the Term Sheet and the summary of settlement terms contained herein, the settlement terms contained in the Term Sheet shall govern for all purposes.

<sup>3</sup> The Trustee's collective reference to Fidelity National Financial, Inc. and Fidelity Timber as the "Fidelity Defendants" herein is not intended to foreclose the parties from later determining that a particular settlement term reflects a right or obligation of one or both of the Fidelity Defendants as deemed appropriate.

<sup>4</sup> Upon information and belief, the combined fair market value of the Parkinson Property and the Linderman Ranch is \$10 Million and if sold for such amount would result in a gross payment to the bankruptcy estate in the amount of \$4,050,000 (inclusive

and

(e) all pending litigation by and between the parties would be dismissed and each party would bear their own attorneys' fees and court costs in connection therewith.

13. The Trustee and the Fidelity Defendants have determined that it is in their best interests to resolve their disputes and the pending litigation (including the Fidelity Adversary) pursuant to the terms and conditions of the Term Sheet attached hereto as Exhibit "A."

14. It is contemplated that the transactions contemplated by the Term Sheet will be closed within thirty days following the later of (a) entry of an Order approving this Motion to Compromise Controversy; and (b) execution of a settlement agreement by the parties.

15. The execution of the Term Sheet and the settlement agreement (as well as the consummation of the transactions contemplated thereby) will not constitute an admission or acknowledgement of any wrongdoing or impropriety by the Fidelity Defendants, their owners, officers, directors, agents, and/or any affiliated individual or entity.

16. The Trustee respectfully submits that the proposed settlement with the Fidelity Defendants is in the best interests of the Debtors' bankruptcy estates and should be approved pursuant to Section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure (hereinafter the "Bankruptcy Rules").

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of the \$550,000 payment referenced above). If the Parkinson Property and the Linderman Ranch are sold for a very conservative \$5 Million, the bankruptcy estate would be entitled to a gross payment in the amount of \$2,300,000 (inclusive of the \$550,000 payment referenced above).

17. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”

18. Bankruptcy Rule 9019(a), 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.”

19. 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).

20. 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. Ohio 1987); and *In re Mobile Air Drilling Co.*, 53 B.R. 605 (Bankr. N.D. Ohio 1985).

21. 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).

22. 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.

23. This test was adopted by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11<sup>th</sup> 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.

24. 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).

25. The proposed settlement between the Trustee and the Fidelity Defendants allows the Trustee to avoid the uncertainty, additional expense, inconvenience and delay associated with continuing litigation against the Fidelity Defendants and gives the Trustee an opportunity to settle such claims on favorable terms to the Debtors’ bankruptcy estates.

26. Applying the foregoing standards, the Trustee respectfully submits that the proposed settlement with the Fidelity Defendants is fair, reasonable, and in the best interests of the Debtors’ bankruptcy estates and creditors.

27. For the foregoing reasons, the Trustee respectfully submits that the proposed settlement with the Fidelity Defendants should be approved by the Court.

**WHEREFORE**, the Trustee respectfully requests this Honorable Court to enter an Order approving this Motion to Compromise Controversy, approving the settlement with the Fidelity Defendants, and for 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 Motion To Approve Compromise Of Controversy And Settlement Between The Trustee, Fidelity National Financial, Inc., and Fidelity National Timber Resources, Inc. has been furnished by the Court's CM/ECF System to Steven M. Berman, Esq., Shumaker, Loop & Kendrick, LLP, 101 East Kennedy Boulevard, Suite 2800, Tampa, Florida 33602 and to all creditors and parties in interest registered on the Court's CM/ECF System, on the 2<sup>nd</sup> day of September, 2010.

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



# EXHIBIT A

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

**In re:**

**ULRICH FELIX ANTON ENGLER; and  
PRIVATE COMMERCIAL OFFICE, INC.**

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

**Debtor.**

**ROBERT E. TARDIF, JR.  
as Chapter 7 Trustee,**

**Plaintiff,**

**v.**

**Adv. Proc.: 9:09-ap-1026-MGW**

**FIDELITY NATIONAL FINANCIAL, INC;  
and FIDELITY NATIONAL TIMBER  
RESOURCES, INC. f/k/a FIDELITY  
NATIONAL RANCH PROPERTIES, INC.,**

**Defendants.**

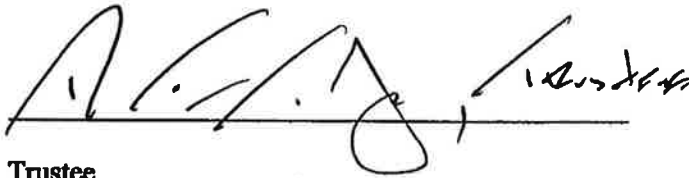
**TERM SHEET**

**ROBERT E. TARDIF JR., as CHAPTER 7 TRUSTEE ("Trustee"), on the one hand, and FIDELITY NATIONAL FINANCIAL, INC., and FIDELITY NATIONAL TIMBER RESOURCES, INC. f/k/a FIDELITY NATIONAL RANCH PROPERTIES, INC., (collectively "Fidelity") on the other hand, agree as follows:**

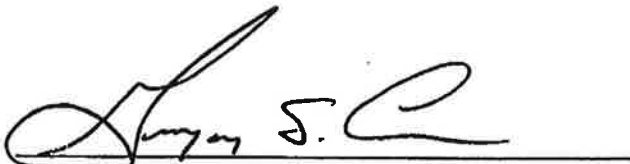
- 1. Fidelity will pay to the Trustee the sum of five hundred fifty thousand dollars (\$550,000.00) within thirty (30) calendar days of the signing of a mutually acceptable Settlement Agreement by both parties; and**
- 2. The Trustee will convey title to the property known as the Parkinson Seed Farm ("Parkinson Property") to Fidelity, pursuant to a Trustee's Deed and such other documents as Fidelity may reasonably determine will be necessary and appropriate to enable it to market and convey marketable title to third parties, in order to facilitate the sale of the Parkinson Property and the Linderman Ranch; and**

3. The Trustee will stipulate to the entry of a decree quieting title to the Linderman Ranch which is the subject of the Adversary Proceeding *sub judice* ("Linderman Ranch") in favor of Fidelity in the Idaho State Court action commenced by Fidelity and the Trustee will also provide such other documents as Fidelity may reasonably determine will be necessary and appropriate to enable it to market and convey marketable title to the Linderman Ranch to third parties; and
4. Fidelity will pay the taxes, insurance, maintenance and other related costs of maintaining both the Parkinson Property and the Linderman Ranch until a sale of each of the properties is completed ("Preservation Expenses"), with such Preservation Expenses to be reimbursed to Fidelity out of the proceeds of any such sale(s) of the properties; and
5. Alex Maher of Live Water Properties ("Broker") will list and market for sale the Parkinson Property and the Linderman Ranch on such terms as are ordinary and customary in the market for like properties and, in seeking the highest and best price for such properties, information regarding the Broker's efforts and progress will be shared freely between the Broker, the Trustee, and Fidelity; and
6. The Broker will develop a marketing and sale program for the marketing and sale of the Parkinson Property and the Linderman Ranch; and
7. Proceeds of the sale of the Parkinson Property and the Linderman Ranch, after deducting the sum of reasonable and customary transaction fees, costs, and reimbursement to Fidelity of the Preservation Expenses, will be distributed as follows:  
  
Sixty-five percent (65%) to Fidelity  
  
Thirty-five percent (35%) to the Trustee; and
7. The Broker will be permitted to market any other properties for the Trustee, as, and on such terms as, the Trustee and the Broker may jointly agree; and
8. The Trustee and Fidelity will use their best efforts to cooperate in order to facilitate the transactions contemplated hereby and to execute such documents and papers as may be necessary to effectuate the meaning and effect of this agreement and the transactions contemplated hereby; and

- 9 In consideration of the terms and provisions contemplated hereby, the Trustee and Fidelity hereby mutually agree to the dismissal and final release of any and claims between them other than to the enforcement of the terms and provisions contemplated herein including, but not limited to the Adversary Proceeding *sub judice*, the withdrawn United States District Court action, the Idaho State Court action, and any and all appeals related thereto (collectively "Litigation"); and
- 10 Each party shall bear its respective attorneys' fees and court costs in connection with the Litigation.

  
Trustee

9/1/10  
Date

  
On behalf of Fidelity

9/1/10  
Date

  
Mediator

9/1/10  
Date