

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re

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

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

CHAPTER 7  
(Substantively Consolidated)

Debtors.

/

**TRUSTEE'S MOTION TO APPROVE**  
**COMPROMISE OF CONTROVERSY WITH DEFENDANT, FRANZ MARSTALLER**

**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 this Motion To Approve Compromise Of Controversy With Defendant,

Franz Marstaller 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”), the above-captioned bankruptcy cases were commenced by involuntary petition.
2. On April 29, 2008, the Bankruptcy Court entered Orders for Relief against the Debtors.
3. The assets and liabilities of the Debtors’ bankruptcy estates were substantively consolidated by orders entered on June 24, 2008, and April 23, 2010.
4. 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 hundreds of avoidance actions with this Court and several courts throughout Europe (hereinafter referred to collectively as the “Avoidance Claims”).
5. Following assertion of the Avoidance Claims, the Trustee and certain of the transferees communicated and exchanged additional documentation concerning the claims, defenses and the correct amount of the transfers.
6. As a result of the Trustee’s assertion of the Avoidance Claims, as well as communications and document exchanges with the German lawsuit Defendant, Franz Marstaller (the “Defendant”), the Trustee has agreed to resolve the Avoidance Claims alleged against the Defendant in the German litigation, subject to this Court’s approval. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit “A”** and is incorporated herein by this reference.

7. 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."

8. 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."

9. 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).

10. 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).

11. In reviewing 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).

12. 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.

13. 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.

14. 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)).

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

16. Applying the foregoing standards, the Trustee respectfully submits that the proposed Settlement Agreement with the transferee identified on the attached Exhibit A is 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 that this Honorable Court enter an Order granting this Motion to Approve Compromise of Controversy With Defendant, Franz Marsteller, approving the Settlement Agreement attached as Exhibit "A" and providing such other and further relief as the Court may deem just and proper.

**Dated: February 15, 2011.**

Respectfully submitted,

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

By: /s/ Alexandra D. Blye  
Alexandra D. Blye, Esq.  
Florida Bar No. 71499  
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 With Defendant, Franz Marstaller has been furnished via CM/ECF notice to all creditors and parties in interest registered on the Court's CM/ECF System, via first class mail and/or e-mail to Franz Marstaller, Zugspitzstr. 20, 82054 Sauerlach, Germany and posted on the website englerbk.com in accordance with the Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures [D.E. 451] on the 15<sup>th</sup> day of February, 2011.

By: /s/ Alexandra D. Blye  
Alexandra D. Blye, Esq.

# **EXHIBIT A**

| VERGLEICHSVEREINBARUNG   | SETTLEMENT AGREEMENT   |
|--|--|
| zwischen   | between  |
| Robert E. Tardif, Jr.<br>2430 Shadowlawn Drive, Suite 18<br>Naples, FL 34112<br>USA  | Robert E. Tardif, Jr.<br>2430 Shadowlawn Drive, Suite 18<br>Naples, FL 34112<br>USA  |
| als Bankruptcy Trustee   | as Bankruptcy Trustee  |
| für die Chapter 7 Insolvenzmasse   | for the Chapter 7 Bankruptcy Estates of  |
| des Ulrich Felix Anton Engler<br>und<br>der Private Commercial Office, Inc.  | Ulrich Felix Anton Engler<br>and<br>Private Commercial Office, Inc.  |
| beide: 1217 Cape Coral Parkway, # 121<br>Cape Coral, FL 33904, USA   | both: 1217 Cape Coral Parkway, # 121<br>Cape Coral, FL 33904, USA  |
| Geschäftszeichen: 9:08-bk-04360-MGW<br>(Konsolidiertes Verfahren)  | Case No. 9:08-bk-04360- MGW<br>(Substantively Consolidated)  |
| - im folgenden Gläubiger genannt -   | - hereinafter, the Creditor -  |
| und  | and  |
| Franz Marsteller<br>Zugspitzstr. 20<br>82054 Sauerlach<br>Geboren: 7. August 1939  | Franz Marsteller<br>Zugspitzstr. 20<br>82054 Sauerlach<br>Born: 7 August 1939  |
| - im folgenden Schuldner genannt -   | - hereinafter, the Obligor -   |
| wird Folgendes vereinbart:   | is agreed as follows:  |
| 1. Zwischen den Parteien besteht Uneinigkeit über gerichtlich (LG München I, 12 O 8005/10) geltend gemachte Ansprüche des Gläubigers gegen den Schuldner aus Insolvenzanfechtung in Höhe von zuletzt \$ 155.793,98 (entspricht 113.627 € (EZB-Wechselkurs vom 12. November 2010)) im Zusammenhang mit Auszahlungen auf Vermögensanlagen des Schuldners bei Ulrich Engler, bei der Private Commercial Office Inc. und/oder bei mit diesen verbundenen Unternehmen. Zur Beilegung ihrer Streitigkeiten schließen die Parteien den folgenden Vergleich. | 1. The parties disagree about claims of the Creditor against the Creditor regarding fraudulent transfers and asserted before court (LG Munich I, 12 O 8005/10) in an amount of at last \$ 155,793.98 (equivalent to 113,627 € (ECB exchange rate of 12 November 2010)) in connection with payments on the investments of the Obligor with Ulrich Engler, with Private Commercial Office, Inc. and with any of their affiliates. In order to settle their disputes the parties enter into the following settlement agreement. |

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|--|---|
| <p>2. Der Schuldner hat dem Gläubiger mit Erklärung vom 11. Oktober 2010 versichert, dass sein Vermögen im wesentlichen aus einer monatlichen Rente in Höhe von € 1.564,10 und einer von ihm bewohnten und wertauschöpfend belasteten Immobilie besteht. Der Schuldner hat Bankverbindlichkeiten in Höhe von über € 300.000.</p> <p>Diese Angaben werden hiermit wiederholt und sind wahrheitsgemäß.</p>   | <p>2. The Obligor has represented to the Creditor that his property substantially consists of a monthly pension in an amount of € 1.564,10 and a real estate in which the Obligor lives and which is encumbered with land charges exceeding its value. The Obligor has liabilities against banks in an amount exceeding € 300,000.</p> <p>These representations are hereby repeated and are true.</p>   |
| <p>3. Bei Zahlung eines Betrages von 26.800 € erledigen sich alle Ansprüche der Parteien gegeneinander in Verbindung mit den Vermögensanlagen des Schuldners bei Ulrich Engler, bei der Private Commercial Office Inc. und bei den mit diesen verbundenen Unternehmen (einschließlich eventueller zur Insolvenztable angemeldeter Forderungen). Jede Partei trägt die ihr angefallenen und anfallenden Kosten – einschließlich der Kosten dieses Vergleichs – selbst.</p> <p style="text-align: center;">3</p> | <p>3. Upon a payment in an amount of 26,800 € all claims are settled of the parties against each other in connection with the investments of the Obligor with Ulrich Engler, with Private Commercial Office, Inc. and with any of their affiliates (including any claims, if any, filed with the insolvency estate). Each party itself bears the costs accrued or accruing to it – including the costs of this settlement agreement.</p> <p style="text-align: center;">3</p>   |
| <p>4. Der Betrag nach Ziffer 3 ist zu leisten in 41 monatlichen Raten.</p> <p>Die Höhe der Raten beträgt jeweils 570 €. Die Raten werden erstmalig am 1. Dezember 2010 und danach jeweils am 1. Werktag eines Monats fällig (Zahlungseingang). Angesichts der entstandenen Rechtsanwalts- und Gerichtsgebühren beträgt die Höhe der vierten Rate, die am 1. März 2011 fällig wird (Zahlungseingang), ausnahmsweise 4.000 €.</p> <p style="text-align: center;">3</p>   | <p>4. The settlement amount under No. 3 shall be paid in 41 monthly installments.</p> <p>The amount of each of the installments is 570 €. The installments become due and payable first on 1 December 2010 and thereafter at the first business day of each month (receipt of payment). In light of the accrued attorney and court fees the amount of the fourth installment, which becomes due and payable on 1 March 2011 (receipt of payment), by way of exception 4,000 €.</p> <p style="text-align: center;">3</p> |
| <p>Die letzte Rate wird fällig am 1. April 2014 (Zahlungseingang). Bis zum Zahlungseingang der letzten Rate ist die Verjährung sämtlicher Ansprüche gegen den Schuldner gehemmt.</p>   | <p>The last installment is due and payable on 1 April 2014 (receipt of payment). Until receipt of payment of the last installment, the statute of limitation does not run for any claims against the Obligor.</p>   |
| <p>Die Raten sind zu Händen des folgenden Treuhandkontos zu leisten:</p> <p>Schultze &amp; Braun / Engler<br/>Konto-Nr.: 488 3410<br/>Bankleitzahl: 664 500 50</p>   | <p>The installments are to be paid to the following trust account:</p> <p>Schultze &amp; Braun / Engler<br/>Konto-Nr.: 488 3410<br/>Bankleitzahl: 664 500 50</p>  |

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|---|--|
| Sparkasse Offenburg/Ortenau<br>IBAN: DE82 6645 0050 0004 8834 10<br>BIC: SOLADES1OFG  | Sparkasse Offenburg/Ortenau<br>IBAN: DE82 6645 0050 0004 8834 10<br>BIC: SOLADES1OFG   |
| 5. Unbeschadet anderweitiger gesetzlicher Rechte, kann der Gläubiger, wenn sich der Schuldner mit einer oder mehreren Rate ganz oder teilweise seit mehr als acht aufeinander folgenden Wochen im Zahlungsverzug befindet, vom gesamten Vergleich in der Weise zurücktreten, dass dadurch ein Betrag in Höhe der doppelten Summe der Beträge aller ganz oder teilweise ausstehenden Raten sofort fällig wird. | 5. Without prejudice to its further statutory rights, the Creditor may, if the Obligor is in default with the payment of one or more partial or entire installments for more than eight consecutive weeks, rescind the settlement with such effect that thereby an amount becomes immediately due and payable which is equal to twice the sum of the amounts of all then outstanding partial or entire installments. |
| 6. Unverzüglich nach Unterzeichnung dieser Vergleichsvereinbarung, werden die Parteien bei Gericht das Ruhen des unter Ziff. 1 bezeichneten Gerichtsverfahrens beantragen.  | 6. Immediately after the execution of this settlement agreement, the parties will ask the court to stay the court proceeding referred to under no. 1.  |
| 7. Die Wirksamkeit dieses Vergleiches steht unter der aufschiebenden Bedingung der Zustimmung des US Bankruptcy Court Middle District of Florida durch Judge Michael G. Williamson zu diesem Vergleich.   | 7. The effectiveness of this settlement agreement is subject to the condition precedent of the confirmation of the US Bankruptcy Court Middle District of Florida by Judge Michael G. Williamson to this settlement agreement.   |
| 8. Die deutsche Version dieses Vergleiches ist die verbindliche Version.  | 8. The German version of this settlement agreement shall be the authoritative version.   |
| 9. Dieser Vergleich unterliegt dem Recht der Bundesrepublik Deutschland.<br><br>Es gilt der Gerichtsstand Baden-Baden, soweit das Gesetz keinen anderen Gerichtsstand vorschreibt.  | 9. This settlement agreement is subject to the laws of the Federal Republic of Germany.<br><br>The venue is located in Baden-Baden provided that statutory law does not provide any venue.   |

zu Ziffer 6. des Vertrags wird  
nach §278 Abs. 6 ZPO gerücksicht  
protokolliert

at no. 6: the settlement will  
be taken to the court protocol  
pursuant to sec. 278 para.6  
ZPO (German Civil Procedure Code)

Franz Marstaller

Düsseldorf, den / on 22.Nov. 2010

(Unterschrift / Signature)

Namens / on behalf of Robert E. Tardif, Jr.

Schultze & Braun GmbH  
Rechtsanaltsgesellschaft  
Wirtschaftsprüfungsgesellschaft

15.Nov. 2010

Achem, den / on .....

Name: Dr. Annerose Tashiro