

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.

**TRUSTEE'S MOTION FOR APPROVAL OF AMENDED
JOINT PROSECUTION AND COOPERATION AGREEMENT**

ROBERT E. TARDIF, JR. (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. ("Engler," "PCO," and "PCOM," respectively, or collectively the "Debtors"), by and through undersigned counsel, hereby files his Motion For Approval Of Amended Joint Prosecution And Cooperation Agreement, and states in support thereof as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. § 157(a) and 1334(b). Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Venue of this proceeding is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Procedural Background

2. On March 31, 2008 (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 PCO (collectively, the "Initial Debtors") with the Clerk of this Court.

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

4. On April 30, 2008, the Trustee was appointed and continues to serve as the permanent Chapter 7 Trustee for the Debtors' bankruptcy estates.

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

6. 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.

7. As of May 15, 2012, 1,225 Proofs of Claim in the aggregate amount of \$313,132,754.01 were filed in the Engler bankruptcy case and 210 Proofs of Claim in the aggregate amount of \$205,085,382.63 were filed in the PCO bankruptcy case.

Factual Background

8. Engler is a German citizen who perpetrated a massive, transnational Ponzi scheme from this District in which funds received from later investors were used to repay earlier investors.

9. Engler solicited investments from individuals and entities throughout the world (collectively, the "Investors") through a network of sales agents, through use of the mails and wires, and by means of newspaper advertisements and telephone solicitations.

10. Engler purported to be a highly experienced investor who had a long history of generating significant investment returns through "conservative" day trading activities in securities listed on the New York Stock Exchange.

11. Engler represented that he possessed sophisticated software that was capable of analyzing approximately 35,000 shares of stock every five seconds and that he was therefore

capable of capturing significant investment returns before other day traders or investment bankers.

12. Engler initially instructed Investors to deposit funds into a bank account maintained by PCO at SunTrust Bank in this District and subsequently instructed Investors to deposit funds into bank accounts maintained by PCOM at SunTrust and Wachovia Banks in this District (the “SunTrust Accounts” and the “Wachovia Accounts,” respectively, or collectively the “Bank Accounts”).

13. In accordance with Engler’s instructions, Investors deposited over \$150 Million into the Bank Accounts maintained by PCO and PCOM with the expectation that Engler would invest those funds in securities listed on the New York Stock Exchange.

14. Engler also transferred \$35,112,948.23 in Investors’ funds from PCO’s SunTrust Accounts to open and fund PCOM’s Wachovia Accounts and to close PCO’s SunTrust Accounts.

15. Upon information and belief, Engler never engaged in day trading activities on behalf of the Investors but, rather, utilized the funds received from later investors in order to repay earlier investors and for lavish personal expenditures.

16. The German authorities issued an international warrant for Engler’s arrest with respect to the foregoing activities on or about December 4, 2007 and a request for extradition to the United States Government on or about April 21, 2008.

17. Engler is currently a fugitive from justice.

The Amended Joint Prosecution And Cooperation Agreement and Class Action Suit

18. Since these cases were commenced by involuntary petition on March 31, 2008, the Trustee has engaged and compensated professionals to conduct factual investigations

concerning the Debtors' operations and to perform a forensic accounting analysis of the Debtors' Bank Accounts.

19. As a result of the services of the Trustee's professionals, the Trustee has obtained information and documents that would be helpful in prosecuting claims against third parties relating to Engler's Ponzi scheme.

20. The Investors, as the parties victimized by Engler's Ponzi scheme, also have first-hand knowledge of pertinent facts and documentation concerning their losses.

21. The Trustee and the Investors thus have a common interest in investigating and prosecuting claims which could result in the recovery of funds for creditor/victims of Engler's Ponzi scheme.

22. The Trustees and certain of the Investors (the "Class Action Plaintiffs") have determined that the prosecution of claims against SunTrust Bank ("SunTrust") and Wells Fargo Bank, N.A. f/k/a Wachovia Bank, N.A. ("Wells Fargo") can be done more capably, efficiently, and effectively if the parties cooperate and jointly prosecute such claims.

23. Accordingly, the Trustees and the Class Action Plaintiffs have agreed to cooperate and jointly prosecute certain legal claims for their mutual benefit.

24. On December 15, 2011, the parties filed the class action suit styled *Franz Lesti and Petra Richter, individually and on behalf of all others similarly situated, and Robert E. Tardif, Jr., in his capacity as the Chapter 7 Trustee of the substantively consolidated bankruptcy estates of Debtors, Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. v. Wells Fargo Bank, N.A. (f/k/a Wachovia Bank, N.A.)*, United States District

Court for the Middle District of Florida (Fort Myers Division), Case Number 2:11-cv-00695-JES-DNF (the “Class Action Suit”).¹

25. On March 30, 2012, the parties filed an Amended Complaint in the Class Action Suit adding Christa and Hubert Millentrup, Herbert Schickle, Hans and Kathi Zwicky, and Wolf Von Loeben, individually and on behalf of all others similarly situated (collectively, the “SunTrust Plaintiffs”) as Class Action Plaintiffs and SunTrust as a defendant. *See* Class Action Suit, Doc. 24.

26. In the Class Action Suit, the parties have asserted claims against SunTrust and Wells Fargo for: (i) aiding and abetting conversion; (ii) aiding and abetting fraud; (iii) aiding and abetting breach of fiduciary duties; (iv) unjust enrichment; and (v) negligence and wire transfer liability.

27. On January 31, 2012, the Trustee filed a Motion For Approval Of Joint Prosecution And Cooperation Agreement with respect to the Class Action Suit (the “Motion for Approval”). *See* Doc. 788.

28. On February 6, 2012, the Court entered an Order granting the Motion for Approval. *See* Doc. 791.

29. As a result of the filing of the Amended Complaint in the Class Action Suit, the parties amended the Joint Prosecution And Cooperation Agreement approved by the Court on February 6, 2012 in order to identify the additional plaintiffs and defendant as well as to provide for the Trustee’s continued representation by Kozyak Tropin & Throckmorton, P.A. (“KTT”) in

¹ The law firm of Robbins Geller Rudman & Dowd LLP (“RGRD”) represent the Class Action Plaintiffs in the Class Action Suit. RGRD is one of the nation’s leading class action firms and is regularly appointed as lead counsel by courts around the country.

connection with federal and/or state banking law issues in the Class Action Suit (the “Amended Agreement”).² A copy of the Amended Agreement is attached as *Exhibit I*.

30. The Trustee continues to believe, in the exercise of his business judgment, that the agreement is in the best interest of the Debtors’ estates and is fair and equitable because: (i) the Amended Agreement is the product of arm’s length negotiations between the Trustee and the Class Action Plaintiffs; (ii) the Trustee’s and the Class Action Plaintiffs’ legal interests with respect to the claims against SunTrust and Wells Fargo are intertwined; (iii) joint prosecution of the claims against SunTrust and Wells Fargo would be the most efficient and effective way to maximize the estates’ recoveries with respect to the claims; and (iv) the estate would be permitted to prosecute the claims without the burden of potentially significant hourly attorneys’ fees and costs regardless of the outcome of the Class Action Suit (while incentivizing counsel and rewarding the creditor body for a significant recovery).

31. For the foregoing reasons, the Trustee respectfully submits that the Amended Agreement is in the best interests of the Debtors’ creditors and should be approved by the Court.

WHEREFORE, the Trustee respectfully requests the Court to enter an Order approving the Amended Agreement, authorizing the Trustee to take all actions necessary to implement the terms thereof, and for such further relief as the Court may deem appropriate.

² The Trustee filed an application to employ KTT on December 22, 2010 and the application was approved by the Court on January 3, 2011. *See* Doc. Nos. 546 and 549.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.
Special Counsel to 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 Motion For Approval Of Amended Joint Prosecution And Cooperation Agreement has been furnished to all creditors and/or interested parties registered on the Court's CM/ECF System and was also posted on the website "englerbk.com" in accordance with the Order Granting Trustee's Motion To Establish Certain Notice, Case Management And Administrative Procedures [C.P. 451], on the 16th day of May, 2012.

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

EXHIBIT 1

AMENDED JOINT PROSECUTION AND COOPERATION AGREEMENT

THIS AGREEMENT is made and entered into effective the 1st day of January, 2012 by and among ROBERT E. TARDIF, JR. (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. (collectively, the “Debtors”), the Trustee’s special counsel, Genovese Joblove & Battista, P.A. (“GJB”) and Kozyak Tropin & Throckmorton, P.A. (“KTT”), and Robbins Geller Rudman & Dowd, LLP (“RGRD”) on behalf of FRANZ LESTI and PETRA RICHTER (collectively the “Wells Fargo Plaintiffs”), CHRISTA and HUBERT MILLENTRUP, HERBERT SCHICKLE, HANS and KÄTHI ZWICKY, and WOLF VON LOEBEN (collectively the “SunTrust Plaintiffs,” together with the Wells Fargo Plaintiffs the “Class Action Plaintiffs”), individually and on behalf of all others similarly situated (together with the Trustee the “Parties”), for the purpose of jointly prosecuting their common interests in connection with the Class Action Suit (as defined below).

WHEREAS, the Parties and their undersigned counsel agree that the Trustee and the Class Action Plaintiffs share certain common legal interests in investigating and prosecuting the class action suit styled *Franz Lesti and Petra Richter, individually and on behalf of all others similarly situated, and Robert E. Tardif, Jr., in his capacity as the Chapter 7 Trustee of the substantively consolidated bankruptcy estates of Debtors, Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. v. Wells Fargo Bank, N.A. (f/k/a Wachovia Bank, N.A.)*, United States District Court for the Middle District of Florida (Fort Myers Division), Case Number 2:11-cv-00695-JES-DNF (the “Class Action Suit”); and

WHEREAS, because of the potential identity of legal interests between the Parties as they relate to the Class Action Suit, and the fact that their legal interests may be intertwined and

co-existent such that joint prosecution of the Class Action Suit will be most efficient and prudent if they work together, the Parties have agreed, subject to approval of the Bankruptcy Court, to prosecute the Class Action Suit jointly in accordance with this Agreement, share and exchange privileged and/or confidential information, information protected by the work-product doctrine and any other applicable legal privileges, exemptions, protections and agreements both orally and in documents and electronic format including analyses, mental impressions, legal and factual memoranda, reports of witness interviews, drafts of papers, motions, pleadings, and other information, written communications, reports of experts, consultants or investigators, meetings in person, by telephone or other forms of electronic communication, and records or reports of such communications, financial information, memoranda, analyses or other documents concerning the subject matter of the Class Action Suit, together with certain other information and documents in the possession, custody or control of the Trustee or the Class Action Plaintiffs relating to the Class Action Suit as may be reasonably requested by the Class Action Plaintiffs or the Trustee (collectively, the "Materials"). The Parties would not disclose to each other the Materials but for their mutual and common interests in prosecuting and monitoring the Class Action Suit and but for the undertakings in this Agreement; and

WHEREAS, the Parties intend through this Agreement that any and all sharing of Materials pursuant to this Agreement be protected pursuant to the "common interest" or "joint defense" doctrines, to the fullest extent such protection is available under applicable law, subject to the provisions of this Agreement; and

WHEREAS, there exists uncertainty as to whether the Parties could succeed separately in prosecuting their respective claims on behalf of the Debtors' estates and the Class Action Plaintiffs, and because such claims are based, in part, upon the same facts, the Trustee and the

Class Action Plaintiffs have agreed to cooperate in the prosecution of their claims against Wells Fargo Bank, N.A. f/k/a Wachovia Bank, N.A. and SunTrust Bank (the “Jointly Pursued Claims”); and

WHEREAS, the Trustee and the Class Action Plaintiffs believe that such cooperation and joint prosecution of the Jointly Pursued Claims may result in settlement amounts or recovery at trial (collectively, the “Joint Recoveries”) significantly greater and more promptly than would be achieved if such claims were not pursued jointly;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is individually acknowledged by each of the undersigned, the undersigned agree as follows:

1. GJB and RGRD shall be primarily responsible for the joint prosecution of the Class Action Suit on behalf of the Trustee and the Class Action Plaintiffs respectively. KTT may continue to advise and/or represent the Trustee in connection with federal and/or state banking law issues which arise in the Class Action Suit from time-to-time.

2. Upon application and approval by the Bankruptcy Court and the District Court, GJB and RGRD shall be compensated for their services in the Class Action Suit on a contingency fee basis equivalent to forty percent (40%) of the gross Joint Recoveries obtained in the Class Action Suit (the “Contingency Fee”) and shall be entitled to reimbursement of all actual and necessary costs incurred in connection therewith. Seventy percent (70%) of the Contingency Fee shall be allocated and paid to RGRD and thirty percent (30%) of the Contingency Fee shall be allocated and paid to GJB. Upon application and approval by the Bankruptcy Court, KTT shall continue to be compensated on an hourly basis and shall be entitled

to reimbursement of all actual and necessary costs incurred in connection with its services in the Class Action Suit.

3. The net proceeds of any Joint Recoveries shall be shared equally between the Debtors' estates and the Class Action Plaintiffs on an equal, fifty-fifty (50/50) basis.

4. Any Joint Recoveries shall settle the respective Jointly Pursued Claims on behalf of the Debtors' estates and the Class Action Plaintiffs.

5. All Joint Recoveries shall immediately be deposited into an interest-bearing escrow account (the "Escrow Account") to be held by GJB and distributed upon approval of the Bankruptcy Court and the District Court.

6. Any and all claims the Trustee has under Chapter 5 of the Bankruptcy Code are specifically excluded from this Agreement.

7. The Parties agree that neither the Trustee nor the Class Action Plaintiffs shall settle or otherwise compromise any Jointly Pursued Claim unless the other party agrees to the terms and conditions of such settlement, and in connection therewith agrees to compromise and settle its own claims, subject to Bankruptcy Court approval pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

8. Counsel for each of the Parties has concluded that, because of the common interests that each of the Parties has, it is in the Parties' and Counsel's respective interests in connection with the Class Action Suit to share the Materials. Materials shall not include, (i) materials that are not privileged or protected by the work product doctrine or (ii) any documents and materials available publicly, through discovery without a privilege or work product protection, or that have been disclosed publicly but not in violation of this Agreement.

9. Nothing in this Agreement shall be construed to affect the separate and independent representation of each Party by its respective counsel. Without limiting the foregoing, nothing in this Agreement is intended to create fiduciary relationships and/or fiduciary duties between or among any Party hereto and any other Party's counsel. Each Party understands and acknowledges that it is represented by its own counsel and not by counsel for any other Party hereto. The Parties and their respective counsel agree that there is no imputation or presumption of the sharing of confidential information beyond the individuals who actually share such confidences as authorized under this Agreement.

10. Materials shared by a Party have been and shall be without any representation or warranty by such Party as to the accuracy of such information in any respect. The Parties shall cooperate and exchange information in such a manner as to preserve, to the extent permitted by law, their respective rights and the rights of each other under the attorney-client privilege, the work-product doctrine and/or any other applicable privileges, doctrines or protections. Nothing in this Agreement is intended or shall be construed to require any Party hereto to violate any order of a court of competent jurisdiction. Nothing herein shall create any obligation on the Parties to cooperate with respect to any cause of action, issue or litigation other than the Class Action Suit.

11. Some Materials may be privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the work product doctrine or other applicable privileges or confidentiality protections or agreements. It is the desire, intention and mutual understanding of the Parties hereto that (a) the sharing of Materials between or among them (including any counsel, directors, officers, affiliates, partners, trustees, employees, agents, representatives, consultants, accountants, financial advisors, experts, and other professional advisors of the

Parties (collectively, the “Representatives”) is not intended to, and shall not, waive or diminish in any way the confidentiality of such Materials or their continued protection under applicable privileges, doctrines or protections, and (b) all Materials provided by a Party (including through any of its Representatives) pursuant to this Agreement that are entitled to protection under any recognized privileges, doctrines, protections or agreements, shall remain entitled to such protection under the common interest and joint defense doctrines. Each Party intends and understands that any disclosure of Materials to the other Party or any Representatives pursuant to this Agreement will not constitute a waiver or breach of any available privilege, doctrine, agreement or protection.

12. This Agreement cannot and shall not be used in any Rule 2004 examination, other discovery or court-related hearing or proceeding to obligate any deposition or other examination of the Trustee or the Class Action Plaintiffs or the production of any documents or information by the Trustee or the Class Action Plaintiffs.

13. No Party shall disclose any other Party’s Materials except (a) with the prior written consent of the other Party; (b) as otherwise provided in this Agreement; or (c) as required by law or court order or pursuant to a regulator’s or self-regulatory organization’s rules of inspection requirements but only after giving the other Party reasonable prior written notice of such intended disclosure; provided, however, that the foregoing notice requirement shall not apply with respect to disclosures requested or required pursuant to any routine regulatory examination to which a Party or its Representative are subject in the ordinary course of business.

14. In the event that a Party is provided pursuant to this Agreement with “nonpublic personal information” as that term is defined in Section 6809(4) of the Gramm-Leach-Bliley Act, such Party agrees to implement and maintain appropriate safeguards for the protection of such

information which safeguards are reasonably designed to achieve the following objectives: (a) insure the security and confidentiality of customer records and information; (b) protect against any anticipated threats or hazards to the security of customer records and information; and (c) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer. The Parties shall cooperate in complying with any federal or state law or regulation requiring the Parties to provide notice to a person that a suspected breach/compromise of such person's personal information, as supplied to you, has occurred or is believed to have occurred.

15. Any Materials, and the information contained therein, are to be used by each Party or Representative receiving them solely in connection with the Class Action Suit, or legal positions related thereto and for no other purpose. Materials received shall not be disclosed except to the Parties and their Representatives, and all persons to whom such disclosure is to be made shall first be advised of the terms and conditions of this Agreement to control access to and disclosure of Materials and shall agree to submit to the jurisdiction of the Bankruptcy Court in any proceedings to enforce or for breach of this Agreement. Upon request, each Party shall disclose to the other Party the identity of all persons (other than counsel and other professionals retained in connection with the bankruptcy case) to whom such Party proposes to disclose the other Party's Materials. Except as provided above, each Party shall also provide advance notice to each other Party of its intention to disclose the other Party's Materials to any expert consultant, or independent contractor.

16. If any person or entity not a Party to this Agreement requests or demands access to Materials provided pursuant to this Agreement, by way of subpoena, document request or otherwise, counsel for the Party receiving the demand or subpoena shall promptly notify counsel

for the Party that provided any such Materials. The Party that provided the Materials shall be permitted a reasonable opportunity to protect its privileges and interests. The Party receiving the demand or subpoena shall take reasonable steps necessary or appropriate to permit the assertion of applicable rights and privileges with regard to said Materials in the appropriate forums and shall reasonably cooperate in any proceeding relating to the disclosure sought.

17. Each Party agrees to be bound by the terms of this Agreement and not to disclose Materials received from the other Party except as permitted by this Agreement, even after such Party is no longer a party to the Class Action Suit or other matters described herein. Nothing in this Agreement is intended or shall be construed to limit the right of a Party to disclose or otherwise deal with its own documents or information, including Materials that were not received from the other Party, in any manner that such Party, in its sole discretion, deems appropriate. Nothing in this Agreement shall prevent a Party from asserting a claim or defense against any other Party with respect to any matter. In any such action, Materials shall not be deemed an admission by a Party opponent by virtue of the disclosure of such Materials pursuant to this Agreement.

18. Either Party or its counsel may give notice to another Party demanding the return of Materials produced. Upon receiving such notice, the other Party and its counsel shall return (or certify it has destroyed) any such Materials (excluding electronic mail); provided, however, that with respect to any Common Interest Materials not marked "CONFIDENTIAL MUST BE RETURNED," either Party or its counsel may, but shall not be required to, retain a copy of the Common Interest Materials to the extent required by law, rule, regulation or such Party's or counsel's internal document retention policy and such copy shall remain subject to the terms of this Agreement. With regard to electronic mail containing Materials, each Party agrees that it

shall not, after withdrawing from this Agreement, access or use any Materials set forth in or attached to such electronic mail that it did not otherwise have in its possession or have access to prior to receiving such Materials from the other Party. Notwithstanding any such demand for return of Materials, the terms and conditions of this Agreement shall continue to apply to Materials shared between the Parties pursuant to this Agreement prior to such demand. Nothing contained in this Agreement shall be deemed to create an attorney-client relationship between any Party and any person or entity. The fact that a Party has entered into this Agreement and has shared or received Materials shall not be used by the other Party as a basis to seek to disqualify any counsel or any expert retained by that counsel from representing its client(s) in the Class Action Suit, the bankruptcy case, and/or any adversary proceeding filed in the bankruptcy case. Except as may otherwise be provided by applicable law or ethical standards, in the event that, in the bankruptcy case or in any related or unrelated action, investigation, inquiry or proceeding, any officer, director, employee or client of any of the undersigned becomes a witness who may be called upon to provide evidence concerning the other undersigned Party, or in any way undertakes any act or position that may be construed to be adverse to such other Party (including, but not limited to, appearance as a witness adverse to the other Party), nothing in this Agreement shall be deemed to create a conflict of interest nor shall any Party hereto argue that such a conflict of interest exists so as to require the disqualification of any counsel. Except as may otherwise be provided by applicable law or ethical standards, no undersigned counsel or law firm of any undersigned counsel shall be disqualified from examining or cross-examining any client of any of the undersigned counsel who testifies at any proceeding, whether under grant of immunity or otherwise, or from taking any other act in any litigation, because of such counsel's participating in this Agreement or because counsel has been privy to privileged or protected

information pursuant to this Agreement. Each counsel signatory to this Agreement has specifically advised his or her client(s) of this paragraph.

19. The provisions contained herein are subject to the approval of the Bankruptcy Court and the District Court. In the event this Agreement or any material provision hereof is not approved by either the Bankruptcy Court or the District Court, this Agreement shall be null and void whereupon the Parties may proceed with litigation as if this Agreement had never been entered into.

20. This Agreement constitutes the entire agreement and understanding among the Parties hereto with respect to the subject matter hereof and memorializes any prior oral or written understandings among the Parties or counsel regarding the Materials and/or the Class Action Suit and applies to all communications and other exchanges of information (whether written or oral) among counsel related to the Class Action Suit prior to the execution of this Agreement.

21. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed to be an original and shall be binding on the party who, through its counsel, signed the counterpart, all of which together shall constitute a single agreement.

22. This Agreement shall be governed by the laws of the State of Florida without regard to conflicts of law principles.

23. The Parties agree that any dispute under this Agreement shall be subject to the exclusive jurisdiction and venue of the Bankruptcy Court, and each of the Parties hereby waives any and all objections to the assertion of such jurisdiction and any right to a trial or hearing by a jury. The Parties expressly acknowledge and agree that no adequate remedy is available at law

for breach of this Agreement and that, in addition to any other remedies available, performance of this Agreement may be specifically ordered or a breach hereof may be enjoined, or both.

24. Each Party to this Agreement acknowledges that this Agreement was drafted jointly by the Parties hereto, that each Party has consulted with such Party's counsel and fully understands the terms hereof, and that each Party has received legal advice from such Party's counsel regarding the advisability of entering into this Agreement and is voluntarily executing the Agreement. This Agreement is not intended to, and shall not, create rights in any person or entity not a Party hereto. Other Parties may be added to this Agreement only with the prior unanimous written consent of all Parties hereto and, if required, after approval of the Bankruptcy Court.

25. In the event that any provision(s) of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable as written, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible and any provision found illegal, void or unenforceable shall be given such effect so as to bring the otherwise unenforceable provision into compliance with applicable law and shall thereafter be enforceable to the fullest extent reasonably possible within the meaning, spirit and interest of the original provision.

26. Subject only to the Trustee obtaining approval of the Bankruptcy Court, each signatory to this Agreement hereby states and affirms that he or she has full authority to execute this Agreement on behalf of the Party or other person or entity for whom he or she executes the Agreement.

27. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns, and any corporation, partnership or other entity into or with which any Party hereto may merge, consolidate or reorganize.


28. As used herein, the singular of any word shall also include the plural and the use of any gender shall include all other genders.

29. Any notice required or contemplated by this Agreement shall be in writing and shall be deemed delivered if sent by hand, overnight delivery service, facsimile or electronic transmission to the addresses set forth on the signature page below. Each Party may change the address for notice by providing notice to the other Party as set forth above.

30. Except as expressly set forth herein, this Agreement shall have no effect on any other matters involving the Parties.

IN WITNESS HEREOF, the Parties have each caused this Agreement to be executed and delivered effective as of the first date written above.


GENOVESE JOBLOVE & BATTISTA, P.A.
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By: 
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By:  (FBN 582761)
Thomas A. Tucker Ronzetti
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[SEE FOLLOWING PAGE]

ROBERT E. TARDIF, JR., TRUSTEE
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Fort Myers, Florida 33902
Telephone: (239) 362-2755
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27. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns, and any corporation, partnership or other entity into or with which any Party hereto may merge, consolidate or reorganize.

28. As used herein, the singular of any word shall also include the plural and the use of any gender shall include all other genders.

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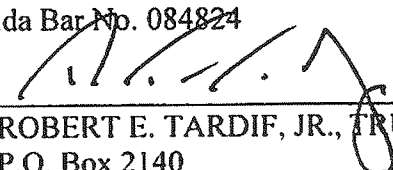
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