

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

<p>IN RE:</p> <p>ULRICH FELIX ANTON ENGLER and PRIVATE COMMERCIAL OFFICE, INC.,</p> <p style="text-align: center;">Debtors.</p>	<p>Case No. 9:08-bk-04360-ALP Case No. 9:08-bk-04365-ALP</p> <p>Jointly Administered</p>
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**FIRST AND FINAL APPLICATION OF (A) FOWLER WHITE BURNETT,
P.A. AND (B) BERND H. KLOSE, ESQ. FOR ALLOWANCE OF FEES AND
REIMBURSEMENT OF COSTS AS SPECIAL COUNSEL TO THE TRUSTEE
FOR THE PERIOD OCTOBER 8, 2008 THROUGH JANUARY 31, 2012**

Summary of Request for Allowance to Fowler White Burnett, P.A.

<i>Name of Applicant:</i>	FOWLER WHITE BURNETT, P.A. Espirito Santo Plaza, Fourteenth Floor 1395 Brickell Avenue Miami, Florida 33131 Telephone: (305) 789-9200 Facsimile: (305) 789-9201
<i>Services Provided:</i>	Special Counsel to Chapter 7 Trustee
<i>Date of Retention:</i>	Order on Application to Employ Counsel filed on October 8, 2008 [Doc. 85]
<i>Period for this Application:</i>	October 8, 2008 through January 31, 2012
<i>Amount of Compensation Sought:</i>	\$78,061.25
<i>Amount of Expense Reimbursement:</i>	\$1,762.18
<i>Blended Hourly Rate this Application (excluding paralegal or other paraprofessional time):</i>	\$367.35 (212.50 hours)
<i>Less Retainer Applied:</i>	None

Summary of Request for Allowance to Bernd H. Klose, Esq.

<i>Name of Applicant:</i>	Bernd H. Klose, Attorney-at-law Wilhelmstraße 14a 61381 Friedrichsdorf Germany Telephone: +49 61 72/73 17-0 Facsimile: +49 61 72/73 17-17
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<i>Services Provided:</i>	German Counsel to Chapter 7 Trustee
<i>Date of Retention:</i>	Order on Application to Employ Counsel filed on October 8, 2008 [Doc. 85]
<i>Period for this Application:</i>	October 8, 2008 through January 31, 2012
<i>Amount of Compensation Sought:</i>	€3,998.84 (or \$4,861.39 USD at 1 EUR = 1.21570 USD; final USD amount to be determined at time of wire transfer)
<i>Amount of Expense Reimbursement:</i>	€6.54 (or \$68.74 USD at 1 EUR = 1.21570 USD; final USD amount to be determined at time of wire transfer)
<i>Blended Hourly Rate this Application (excluding paralegal or other paraprofessional time):</i>	€200.00 (or \$243.14 USD at 1 EUR = 1.21570 USD) (19.98 hours)
<i>Less Retainer Applied:</i>	None

Fowler White Burnett, P.A. (“Fowler White”) respectfully applies to this Court for its first and final allowance of compensation for services rendered in the amount of \$78,061.25 and reimbursement of expenses incurred in the amount of \$1,762.18 for an allowance of \$79,823.43 for the period of October 8, 2008 through January 31, 2012 (the “Application Period”) in connection with its representation as Special Counsel to Robert E. Tardif, Jr., the Chapter 7 Trustee (the “Trustee”).

Additionally, Fowler White applies herein on behalf of Bernd H. Klose, Esq. (“Klose”) for his first and final allowance of compensation for services rendered in the amount of €3,998.84 (or \$4,861.39 USD at 1 EUR = 1.21570 USD) and reimbursement of expenses incurred in the amount of €6.54 (or \$68.74 USD at 1 EUR = 1.21570 USD) for an allowance of €4,055.38 for the Application Period in connection with his representation as German Counsel to the Trustee. The final USD amount shall be determined at the time of the wire transfer to Klose.

In support of these requests, Fowler White states the following:

Background

1. On March 31, 2008 (the "Petition Date"), Klaus Wolfschmidt, Reinhard Muller, and Anneliese Schmitt (collectively, the "Petitioning Creditors") filed two involuntary petitions for relief under Chapter 7 of the Bankruptcy Code against Ulrich Felix Anton Engler a/k/a Ulrich Engler a/k/a Richard Engler a/k/a Richie Engler ("Engler") and Private Commercial Office, Inc. ("PCO") (collectively, the "Debtors") with the Court.
2. On April 16, 2008, the Court entered an order admitting Ronald G. Neiwirth and the firm of Fowler White to appear as counsel to Petitioning Creditors (Doc. 5).
3. On April 29, 2008, the Court entered an Order for Relief against the Debtors.
4. On April 30, 2008, Robert E. Tardif, Jr. was appointed as the permanent Chapter 7 Trustee for the Debtors' Bankruptcy Estates.
5. On June 24, 2008, the Debtors' cases were consolidated under Case. No. 9:08-bk-4360-ALP, *In re: Ulrich Felix Anton Engler* (Doc. 51).
6. Fowler White's retention as Special Counsel to the Trustee and Klose's retention as German Counsel were approved by Order dated October 8, 2008 (Doc. 85).

Summary of Services Performed

7. Fowler White was retained to represent the Debtors' estates (the "Estate") with respect to "complicated legal problems involved in the administration of this Estate and actions that may arise in this bankruptcy case, and may be required to be taken in other countries, specifically, without limitation, in Germany, Austria, and Switzerland" with the assistance of Klose (Doc. 81).

8. Fowler White worked closely with Klose and the German prosecuting authorities to assist in the release of several million dollars of forfeited assets which were recovered by German authorities to the custody of the Trustee herein, so that the same may be included in the Estate. Specifically, Fowler White and Klose provided the following services:

- a. Preparation of pleadings and correspondence to the Mannheim, Germany Prosecutor's Office and related telephone calls to secure substantial assets seized from Engler and related persons for the benefit of the Estate, and to protect the Trustee's rights in relation to claims upon publication of the seized assets by the German Prosecuting Authorities;
- b. Legal research of applicable U.S. law and coordination with respect to German law as to procedures and rights of the Trustee and creditors;
- c. Legal research and determination of issues in U.S. and German bankruptcy laws in support of pleadings filed with the Mannheim Prosecutor's Office and the Mannheim Court;

- d. Obtainment and review of the electronic file at the Mannheim Prosecutor's Office and provide copies to the Trustee;
- e. Coordination with the law firm of Schultze & Braun, Germany and the Trustee regarding preparation of pleadings filed with the Mannheim Prosecutor's Office and the Mannheim Criminal Court;
- f. Determination of the nature of the assets, values and monetary amounts seized by the German Prosecutor's Office in cooperation with the Prosecutor and the Stuttgart (Germany) Criminal Investigations Office;
- g. Filing of responses to the Prosecutor's motions in order to preserve the Trustee's rights to seized assets and address German preferential transfer statutes affecting the seized assets;
- h. Obtainment of the Mannheim Court Ruling of September 9, 2010 rescinding prior orders relating to the Debtors and an associate of the Debtors for the benefit of the Trustee, and recognition of the rights of the Trustee to the seized assets upon conclusion of "claw-back" litigation by the Trustee in Europe;
- i. Obtainment of confirmation from the German Prosecutor's Office that existing asset seizures will not be terminated and will be protected for the Trustee in the event of claims from individual creditors;
- j. Preparation of a petition to release funds seized from Klaus-Dieter Meixner to the Trustee;

- k. Assistance with the timely filing of “claw-back” litigation in Europe by the Trustee and determination of defendants and of specific assets seized by the German Prosecutor’s Office;
 - l. Coordination with the law firm of Schultze & Braun and the Mannheim Prosecutor’s Office regarding continuing steps to secure the Trustee’s rights in the seized assets;
 - m. Cooperation with the Trustee and Soneet R. Kapila, CPA in identifying the Debtors’ bank accounts and specific transactions and transfers by the Debtors and their associates;
 - n. Cooperation with the Stuttgart Criminal Investigations Office in several specific matters under investigation, and obtain records (on CD) relating to the investigation of the Debtors and their associates, and assist that Office in matters relating to the U.S. activities of the Debtors; and
 - o. Cooperation with the German Prosecutor’s Office and assistance with the efforts of that office to obtain legal assistance from the U.S. Department of Justice for the implementation of the international arrest warrant issued against Engler.
9. All services for which compensation is requested were performed for or on behalf of the Trustee.

Summary of Compensation Requested by Fowler White

10. For the Application Period, Fowler White seeks compensation for services rendered for or on behalf of the Trustee in the amount of \$78,061.25. Also for the

Application Period, Fowler White seeks reimbursement of its out-of-pocket expenses incurred in the amount of \$1,762.18.

11. The amounts requested are summarized as follows:

Exhibit A	Summary of Professional and Paraprofessional Time by Timekeeper
Exhibit B	Detail of Professional and Paraprofessional Time by Date
Exhibit C	Detail of Professional and Paraprofessional Time by Category
Exhibit D	Detail of Expenses by Date
Exhibit E	Summary of Expenses by Category

12. Fowler White's time has been divided into categories in accordance with the U.S. Trustee Program's guidelines. See Exhibit C for a detail of Fowler White's time by category.

13. Fowler White has voluntarily reduced its fees by \$43,775.75, or 122.65 hours, to ensure all of Fowler White's time for which compensation is requested herein is narrowly focused on asset recovery and related tasks for the Trustee and the benefit of the Estate. Deducted fees and expenses are marked "NC" for "No Charge" on the detailed exhibits attached.

Summary of Compensation Requested by Bernd H. Klose, Esq.

14. For the Application Period, Fowler White seeks compensation for services rendered by Klose for or on behalf of the Trustee in the amount of €3,998.84 (or \$4,861.39 USD at 1 EUR = 1.21570 USD). Also for the Application Period, Fowler

White seeks reimbursement of Klose's out-of-pocket expenses incurred in the amount of €6.54 (or \$68.74 USD at 1 EUR = 1.21570 USD).

15. The amounts requested are summarized as follows:

Exhibit F	Summary of Professional Time and Expenses by Invoice
Exhibit G	Klose's Invoices to Fowler White (in German and English)

16. All of the compensation requested herein for Klose is for services performed for or on behalf of the Trustee by Klose alone.

Standard for Valuation of Services Performed

17. The valuation of Fowler White and Klose's services in this matter should be based on the foregoing factual recitations and on the following considerations enunciated in *In Matter of First Colonial Corp. of America*, 544 F. 2d 1291 (5th Cir. 1977):

Time and Labor Required

18. As set forth on the attached Exhibit A, Fowler White has spent 212.50 hours rendering professional services to or on behalf of the Trustee from October 8, 2008 through January 31, 2012. Fowler White maintained detailed records of the time devoted in rendering these services. These records, detailed in Exhibit B hereto, are incorporated by reference herein. A summary of out-of-pocket expenses is attached as Exhibit E, and a detail of those expenses is attached as Exhibit D. During all times relevant to the Application Period, hourly billing rates for all attorneys who provided services in this

matter ranged from \$160 per hour to \$525 per hour, and the hourly billing rate for the paralegal who provided services in this matter was \$135 per hour. Copies of résumés for the professionals responsible for management of this case are attached as **Exhibit H**.

19. Klose spent 19.98 hours rendering professional services to or on behalf of the Trustee from October 8, 2008 through January 31, 2012 (see Exhibit F). Klose also maintained detailed records of the time devoted in rendering these services, which are detailed in Exhibit G and are by reference incorporated herein. A detail of Klose's out-of-pocket expenses is included in Exhibit G. During all times relevant to the Application Period, Klose's hourly billing rate was €200.00 per hour. Information on Klose's qualifications and specialties is attached as **Exhibit I**.

Novelty and Difficulty of Case

20. This was an exceptionally complex case involving foreign authorities, many parties, and a fugitive debtor.

Skill Requisite to Perform the Legal Services Properly

21. Fowler White and Klose submit that they have performed the services for the Trustee at a high level of skill. Attorney Baier's fluent German and dual law degrees from Germany and the U.S. were invaluable in protecting the Trustee's rights in Europe.

Preclusion of Other Employment

22. Fowler White and Klose's employment in this bankruptcy case did not *per se* preclude other employment.

Customary Fee

23. The rates charged by Fowler White and Klose are customary for professionals of similar skill and reputation within the Middle District of Florida and do not include any premium. Fowler White maintains office space in Miami, Fort Lauderdale, and West Palm Beach, with research facilities, sophisticated office equipment, and support staff, including secretarial, clerical, and other support personnel. Consequently, a portion of the hourly fee, as may be awarded to Fowler White by this Court, will be utilized to defray overhead charges incurred and paid during the Application Period. Klose maintains a similar system in his Friedrichsdorf, Germany office, and a portion of the hourly fee, as may be awarded to Klose by this Court, will be utilized to defray overhead charges incurred and paid during the Application Period.

Whether the Fee is Fixed or Contingent

24. The fees requested are contingent insofar as they are subject to the Court's approval prior to being paid.

The Limitations Imposed by Client or Other Circumstances

25. The case has required at times that the primary attorney devote a substantial amount of time on an expedited basis.

Nature and Length of the Professional Relationship with the Client

26. Fowler White previously represented the Petitioning Creditors in this case.

Awards in Similar Cases

27. The awarding of fees, as specifically authorized by § 331 of the Bankruptcy Code, has become standard practice in Chapter 7 cases where there are available assets. The time records detailed in the attached exhibits provide the Court and creditors with a detailed description of the activities of counsel in this case. The amount sought by Fowler White and Klose is within the range of awards in similar cases, and represents an economical amount given the circumstances of the case.

Results Obtained

28. Fowler White and Klose preserved the Estate's rights in Europe by having the U.S. proceeding acknowledged in Germany, and ensuring that the seized funds could be included in the "claw-back" litigation. These efforts protected approximately \$3,000,000-\$4,000,000 in seized funds for the Estate.

29. Fowler White referred Klose to the Trustee, and coordinated with Klose to ensure his pleadings complied with U.S. law in addition to German law. Furthermore, the Trustee was provided with information on additional bank accounts of the Debtors, which was received from the German prosecuting authorities in exchange for assistance from Fowler White.

Reimbursement of Out-of-Pocket Expenses Incurred

30. Fowler White has attached as Exhibit D and E a detail and summary of expense disbursements. Fowler White seeks reimbursement of out-of-pocket costs which have been incurred during the Application Period in the amount of \$1,762.18, which are broken down as (a) research in the amount of \$16.00; (b) postage in the amount of

\$22.53; (c) telephone charges in the amount of \$156.32; (d) duplication charges (418 copies) in the amount of \$41.80; and (e) a wire transfer in the amount of \$1,525.53.

31. Klose's only out-of-pocket expense incurred is a postage charge in the amount of €6.54 (or \$68.74 USD at 1 EUR = 1.21570 USD), as detailed in Exhibit G.

32. These costs are not included in Fowler White or Klose's overhead, and are normally billed directly to their clients and are not included within the hourly rates charged by their professionals.

Summary and Prayer for Relief

WHEREFORE, Fowler White respectfully requests that the Court allow compensation of \$78,061.25 to Fowler White as Special Counsel for professional services rendered during the Application Period, and reimbursement of Fowler White's expenses in the amount of \$1,762.18, for a total allowance of \$79,823.43; and compensation of €3,998.84 to Klose as German Counsel for professional services rendered during the Application Period, and reimbursement of Klose's expenses in the amount of €6.54, for a total allowance of €4,055.38.

Dated: October 15, 2012.

/s/ Roberta A. Colton

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **FIRST AND FINAL APPLICATION OF (A) FOWLER WHITE BURNETT, P.A. AND (B) BERND H. KLOSE, ESQ. FOR ALLOWANCE OF FEES AND REIMBURSEMENT OF COSTS AS SPECIAL COUNSEL TO THE TRUSTEE FOR THE PERIOD OCTOBER 8, 2008 THROUGH JANUARY 31, 2012** (and all exhibits to same) was served via CM/ECF and/or U.S. mail to: **Debtors**, Ulrich Felix Anton Engler and Private Commercial Office, Inc., 1217 Cape Coral Parkway, Apt. 121, Cape Coral, FL 33904; **Trustee**, Robert E Tardif, Jr., Post Office Box 2140, Fort Myers, FL 33902; **United States Trustee - FTM7, 7**, Timberlake Annex, Suite 1200, 501 E. Polk Street, Tampa, FL 33602; all parties on the attached **mailing matrix**; and all registered **CM/ECF recipients** on October 15, 2012.

/s/ Roberta A. Colton
Attorney