

IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

In Re:

ULRICH FELIX ANTON ENGLER,

Case No. 9:08-bk-04360

Debtors.

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**TRUSTEE'S OBJECTION TO APPLICATION FOR  
PAYMENT OF ADMINISTRATIVE EXPENSES (DOC. NO. 864)**

The Trustee objects to the Application for Payment of Administrative Expenses (Doc. No. 864) and states as follows:

1. The Applicants, who were the Petitioning Creditors, have filed an Application for Payment of Administrative Expenses in the amount of \$106,750.22.
2. The Trustee previously consented to payment of the sum of \$6,816.47, which represents the attorney's fees and costs of Trenam Kemker for serving as local counsel in the filing and prosecution of the Petitioning Creditors' involuntary petition.
3. In addition, the Trustee previously consented to payment of \$4,180.69, which represents that portion of the Application regarding the provision of notice of the pendency of this bankruptcy proceeding to European creditors.<sup>1</sup>
4. Courts should construe the administrative expense provision narrowly in order to maximize distribution to creditors.
5. Creditors filing involuntary petitions cannot recover, as administrative expense, for legal services that relate, not to the involuntary petition, but to pre-bankruptcy litigation.
6. Creditors filing involuntary petitions may seek to recover, as administrative expenses, fees and costs "directly related" to preparation of the involuntary petition and to pursuit

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<sup>1</sup> This money was not actually incurred by the Petitioning Creditors. Rather the amount should have been included in the Application for Compensation by Fowler White as special counsel.

of the petition to successful conclusion. This includes fees for preparing and filing of the involuntary petition, for contacting other creditors to join in petition, for researching legal and factual grounds for involuntary petition and for litigating whether order for relief should be entered.

7. The cut-off point for allowance of administrative expenses under the Code provision authorizing any creditor that files involuntary petition to seek allowance of its actual, necessary expenses and attorney's fees as administrative expense is entry of order for relief. Petitioning creditors cannot recover under this provision for services provided after entry of an order for relief.
8. In this case the Trustee objects to any attorney's fees and expense associated with the Fowler White law firm's involvement with respect to its Application beyond a very nominal amount.
9. It is clear from the record that the law firm of Trenam Kemker performed the necessary services within the purview of the Code provision concerning the allowance of administrative expense and attorney's fees.
10. While the law firm of Fowler White may have assisted Trenam Kemker to some degree, the Trustee believes most, if not all, of its services were unnecessary and/or duplicative of the services of Trenam Kemker, a law firm that has specific expertise in the bankruptcy field.
11. In addition to the foregoing, some of the services performed by Fowler White, and for which it seeks an award, appear to fall into the category of pre-bankruptcy litigation, which are not compensable under the Code.
12. In addition to seeking attorney's fees and costs for pre-bankruptcy services, Fowler White also seeks attorney's fees and costs for services performed from the date the Court entered the Order for Relief and the firm's retention by the Trustee as special counsel.

13. The Trustee objects to the award of any attorney's fees and costs for work the firm performed during this gap period. The firm was not retained by the Trustee during this gap period.
14. Time spent by petitioning creditors on actions within bankruptcy case that are not directly related to prosecution of involuntary petition are not compensable under the Code provisions authorizing allowance of administrative expense.
15. The Petitioning Creditors' Application, to the extent it is based upon Section 503(b)(3)(B), has no legal or factual support. In this case, the Petitioning Creditors neither sought this Court's approval of any action that brought transferred or concealed assets into the estate, nor did the creditors do so on their own.

WHEREFORE the Trustee requests that a hearing be scheduled on this objection and that the Court consider and deny the balance of the Application not previously agreed to by the Trustee.

*Certificate of Service*

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically to the Assistant United States Trustee and Roberta A. Colton on December 21, 2012.

/s/ Robert E. Tardif Jr.  
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