

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Case No. 3:10-bk-02805-PMG

Debtor.

(Consolidated by Prior Court Order with Case  
No. 10-bk-02800-PMG)

**CHAPTER 11 TRUSTEE'S LIMITED OBJECTION TO THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS' APPLICATION FOR AN ORDER AUTHORIZING  
THE EMPLOYMENT OF THE ACCOUNTING FIRM OF BUTTNER HAMMOCK &  
COMPANY, P.A. AS ACCOUNTANTS *NUNC PRO TUNC* TO SEPTEMBER 1, 2010**

Michael Phelan, as the Chapter 11 Trustee (the "Chapter 11 Trustee") of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Debtor"), files this limited objection to the Official Committee of Unsecured Creditors' Application for an Order Authorizing the Employment of the Accounting Firm of Buttner Hammock & Company, P.A. as Accountants *Nunc Pro Tunc* to September 1, 2010 (the "Application") [Docket No. 256], and in support thereof states as follows:

**BACKGROUND**

1. On April 2, 2010 (the "Filing Date"), several petitioning creditors filed an involuntary Chapter 11 petition against Lydia Cladek, Inc., case styled as *In re Lydia Cladek, Inc.*, Case No. 10-bk-02800-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Involuntary Case").

2. Subsequently, on April 5, 2010, the Debtor filed the instant voluntary Chapter 11 petition, case styled as *In re Lydia Cladek, Inc.*, Case No. 10-bk-02805-PMG, in the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division (the "Voluntary Case").

3. On April 7, 2010, several creditors filed an Emergency Motion to Consolidate the Involuntary and Voluntary Chapter 11 cases of Lydia Cladek, Inc. [Docket No. 13], and an Emergency Motion to Appoint a Chapter 11 Trustee [Docket No. 11].

4. On April 12, 2010, the Court entered its Order Granting Motion to Consolidate, consolidating the Voluntary and Involuntary Chapter 11 cases of the Debtor, and providing that the Voluntary Case, Case No. 10-02805, shall be the lead case [Docket No. 32].

5. On April 12, 2010, the Court entered its Order Granting Motion to Appoint Chapter 11 Trustee. [Docket No. 31], and on April 13, 2010, the United States Trustee filed its Appointment of Chapter 11 Trustee and Setting Bond, and its Application for Approval to Appoint Michael Phelan as Chapter 11 Trustee [Docket Nos. 44 and 46].

6. On June 1, 2010, the Court entered a Notice of Appointment of an Unsecured Creditors' Committee of Lydia Cladek, Inc. (the "Committee") [Docket No. 111].

7. On October 1, 2010, the Committee filed its Application [Docket No. 256].

#### **BASIS FOR OBJECTION**

8. While the Chapter 11 Trustee does not dispute that the Committee is entitled to retain certain professionals to provide services and advice for the benefit of the bankruptcy estate, the contemplated services under the Application are excessively broad in scope, and in large measure unnecessary in this particular case, including the following:

- (i) Review and analysis of the reporting regarding cash collateral and any debtor-in-possession financing arrangement and budgets;
- (ii) Analysis of assumption and rejection issues regarding executory contracts and leases;

(iii) Litigation consulting services and expert witness testimony regarding avoidance actions and other matters;

(iv) Accounting and consulting services in furtherance of the Committee's investigation of potential claims against the former principals of the Debtor and third parties; and

(iv) Other such functions as requested by the Committee or its counsel to assist the Committee in this Chapter 11 case.

9. These proposed services are duplicative of the Chapter 11 Trustee's responsibilities, are unnecessary in this particular case, and are outside of the jurisdiction of the Committee.

10. The underlying purpose of the retention of Buttner Hammock & Company, P.A. is to assist the Committee with the necessary financial analysis related to the Committee's proposed reorganization and the administration of the automobile loan portfolio. Any services beyond the scope of this purpose and objective are unnecessary and should not be authorized.

11. Furthermore, the Application does not provide any hourly rates or fee schedule and fails to demonstrate a basis for *nunc pro tunc* approval.

12. The Chapter 11 Trustee has also filed a response in opposition to the Committee's motion to combine the hearing on the disclosure statement and plan of reorganization and incorporates the matters set forth in that response herein by reference. Furthermore, the Chapter 11 Trustee believes that a final evidentiary hearing on this Application should be held in conjunction with the final evidentiary hearing on the Committee's motion to combine the hearing on the disclosure statement and plan of reorganization.

WHEREFORE, the Chapter 11 Trustee respectfully requests entry of an order sustaining this Objection, requiring the Committee to supplement the Application to provide hourly rates and/or an appropriate fee schedule and to demonstrate a basis for *nunc pro tunc* approval, limiting the extent of services to be rendered in any approval of the Application to those services necessary and appropriate in this case and for such other and further relief that is just and proper.

Dated: November 8, 2010.

AKERMAN SENTERFITT

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished either by electronic notification or U.S. mail, this 8<sup>th</sup> day of November, 2010 to all parties on the attached Amended Official Service list.

/s/ Jacob A. Brown

Attorney

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**(amended as of September 20, 2010)**

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