

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)

**MOTION OF CHAPTER 11 TRUSTEE FOR APPROVAL OF
INTERIM COMPENSATION PROCEDURES FOR PROFESSIONALS**

Michael Phelan, the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Chapter 11 Trustee"), pursuant to 11 U.S.C. §§ 105(a) and 331, moves the Court for entry of an order establishing the procedures by which professionals approved by the Court may obtain monthly payment of a portion of their fees and expenses, subject to review and adjustment in connection with regular fee applications filed with the Court, and in support thereof states as follows:

Factual Background

1. On April 2, 2010, 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, Lydia Cladek, Inc. ("LCI" or 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]

4. On April 7, 2010, several creditors filed an Emergency Motion to Appoint a Chapter 11 Trustee. [Docket No. 11]

5. 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]

6. On April 12, 2010, the Court entered its Order Granting Motion to Appoint Chapter 11 Trustee (the "Appointment Order"). [Docket No. 31]

7. 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]

8. On April 13, 2010, Michael Phelan filed a Notice of Acceptance as Chapter 11 Trustee (the "Chapter 11 Trustee"). [Docket No. 45]

9. On April 14, 2010, the Court entered its Order Approving Appointment of Chapter 11 Trustee and Setting of Bond. [Docket No. 47]

10. On April 15, 2010, the Chapter 11 Trustee filed an application seeking to employ the law firm of Akerman Senterfitt as counsel for the Chapter 11 Trustee in these cases pursuant to Section 327 of the Bankruptcy Code. [Docket No. 55]

11. On April 27, 2010, the Court entered its Interim Order Approving Appointment of Akerman Senterfitt as Counsel for the Chapter 11 Trustee. [Docket No. 72]

12. The Chapter 11 Trustee is currently operating the Debtor's business pursuant to sections 1106 and 1108 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

Relief Requested

13. The Chapter 11 Trustee has sought, or will seek, approval to employ various professionals pursuant to section 327, including Akerman Senterfitt as counsel to the Chapter 11 Trustee.

14. The Chapter 11 Trustee proposes the following procedures for the interim compensation of professionals:

(a) On or before the twentieth (20th) day after the end of a month for which compensation is sought, each professional seeking compensation shall serve a monthly statement (the "Monthly Statement") by hand or overnight delivery on (i) the Office of the United States Trustee, 135 W. Central Boulevard, Room 620, Orlando, Florida 32280; (ii) Akerman Senterfitt, 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202; and (iii) counsel for any official committee appointed in this case. The Monthly Statement need not be filed with the Court as this Motion does not alter the requirement for fee applications in accordance with sections 330 and 331.

(b) Each Monthly Statement shall contain a list of individuals and their respective titles who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of tenths of an hour, and a reasonably detailed breakdown of disbursements incurred. No professional should seek

reimbursement of an expense that would not be permitted under the United States Trustee's Guidelines for Fees and disbursements for professionals in this District.

(c) In the event that an interested party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, he or she shall, within ten (10) days after service of the Monthly Statement, serve upon the professional whose statement is objected to and the other persons designated in paragraph (a) above a written "Notice of Objection to Fee Statement," setting forth the nature of the objection and the amount of fees or expenses at issue.

(d) After the expiration of the ten-day period described above, the Chapter 11 Trustee shall promptly pay eighty percent (80%) of the fees and one hundred percent (100%) of the expenses identified in each Monthly Statement to which no objection has been served.

(e) If the Chapter 11 Trustee receives an objection to a particular Monthly Statement, it shall withhold payment of that portion of the Monthly Statement to which the objection is directed and shall promptly pay the remainder of the fees and expenses in the percentages set forth in the preceding paragraph.

(f) If any objecting party resolves a dispute with a professional, the objecting party (or the Chapter 11 Trustee, with the consent of the objecting party) shall serve written notice on the persons designated in paragraph (a) above that the objection is withdrawn and shall describe the terms of the resolution. The Chapter 11 Trustee shall promptly pay that portion of the Monthly Statement at issue that is no longer subject to an objection in the percentages set forth in paragraph (d) above.

(g) Any objection that is not resolved by the parties shall be preserved and presented to the Court at the next interim or final fee application hearing.

(h) The service or lack of an objection in accordance with paragraph (c) above shall not prejudice the objecting party's right to object to any fee application made to the Court on any ground, whether raised in the objection or not. Furthermore, the decision by any party not to object to a Monthly Statement shall not be a waiver of any kind or prejudice that party's right to object to any fee application subsequently made to the Court.

(i) Periodically, but no more than once every 120 days, each professional shall serve and file with the Court, pursuant to sections 330 and 331 and Rule 2016, Federal Rules of Bankruptcy Procedure, an application for interim or final approval and allowance of compensation and reimbursement of expenses, including compensation previously paid by the Chapter 11 Trustee on the basis of a Monthly Statement. The professional shall serve any fee application on the parties listed in paragraph (a) above, and shall serve a notice of hearing on the fee application on all parties on the Rule 1007(d) List of Creditors and Parties in Interest, or upon the members of the Unsecured Creditors Committee if one is appointed.

(j) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation or reimbursement of expenses of any professional.

15. The Chapter 11 Trustee believes that the relief requested in this Motion will streamline the professional compensation process and enable the Court and all other parties to monitor the professional fees incurred in this case more effectively.

16. Section 331 of the Bankruptcy Code, which generally permits professionals to file fee applications every 120 days, expressly contemplates that professionals may be compensated more frequently "if the court permits." The reality is that "when counsel must wait an extended period for payment, counsel is essentially compelled to finance the reorganization. This result is improper and may discourage qualified practitioners from participating in bankruptcy cases; a result that is clearly contrary to Congressional intent." *In re Knudsen Corp.*, 84 B.R. 668, 672 (9th Cir. B.A.P. 1988).

17. In addition to minimizing the financial hardship on the professionals, monthly compensation procedures will enable the Chapter 11 Trustee to monitor the costs of administration, forecast level cash flows, and implement efficient cash management procedures. Moreover, these procedures will allow the Court and parties in interest, including the United States Trustee, to ensure the reasonableness and necessity of compensation sought in this case in advance of formal fee applications.

18. For the foregoing reasons, the Chapter 11 Trustee believes that granting the relief requested herein is appropriate and in the best interest of this estate.

WHEREFORE, the Chapter 11 Trustee respectfully requests the entry of an order in substantially the form attached hereto as Exhibit A establishing procedures by which professionals approved under section 327 of the Bankruptcy Code may obtain monthly payments and granting such other relief as is appropriate.

Dated: May 17, 2010.

AKERMAN SENTERFITT

By: /s/ Jacob A. Brown

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Attorneys for the Chapter 11 Trustee

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 17th day of May, 2010 to:

Lydia Cladek, Inc.
108 Seagrove Main Street
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Lawrence Lilly, Esq.
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United States Trustee
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Orlando, FL 32806

Michael Phelan
Chapter 11 Trustee
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St. Augustine, FL 32080

Alan M. Weiss, Esq.
50 North Laura Street, Suite 3900
Jacksonville, FL 32202

and the parties listed on the attached Local Rule 1007-2 Parties in Interest List.

/s/ Jacob A. Brown
Attorney

Label Matrix for local noticing
113A-3
Case 3:10-bk-02805-PMG
Middle District of Florida
Jacksonville
Mon May 17 12:13:23 EDT 2010

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End of Label Matrix
 Mailable recipients 46
 Bypassed recipients 0
 Total 46

**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)

**ORDER GRANTING CHAPTER 11 TRUSTEE'S MOTION FOR
APPROVAL OF INTERIM COMPENSATION PROCEDURES FOR PROFESSIONALS**

This Chapter 11 case is before the Court upon the motion of Michael Phelan, the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Chapter 11 Trustee"), seeking the entry of an order establishing procedures by which professionals approved by the Court under section 327 of the Bankruptcy Code may obtain monthly payment of a portion of their fees and expenses, subject to review and adjustment in connection with regular fee applications filed with the Court. Upon consideration thereof, it is

ORDERED:

1. The motion is granted.
2. The following procedures shall be followed for the interim compensation of professionals:

(a) On or before the twentieth (20th) day after the end of a month for which compensation is sought, each professional seeking compensation shall serve a monthly statement (the "Monthly Statement") by hand or overnight delivery on (i) the Office of the United States Trustee, 135 W. Central Boulevard, Room 620, Orlando, Florida 32280; (ii) Akerman Senterfitt, 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202; and (iii) counsel for any official committee appointed in this case. The Monthly

Statement need not be filed with the Court as this Motion does not alter the requirement for fee applications in accordance with sections 330 and 331.

(b) Each Monthly Statement shall contain a list of individuals and their respective titles who provided services during the statement period, their respective billing rates, the aggregate hours spent by each individual, contemporaneously maintained time entries for each individual in increments of tenths of an hour, and a reasonably detailed breakdown of disbursements incurred. No professional should seek reimbursement of an expense that would not be permitted under the United States Trustee's Guidelines for Fees and disbursements for professionals in this District.

(c) In the event that an interested party has an objection to the compensation or reimbursement sought in a particular Monthly Statement, he or she shall, within ten (10) days after service of the Monthly Statement, serve upon the professional whose statement is objected to and the other persons designated in paragraph (a) above a written "Notice of Objection to Fee Statement," setting forth the nature of the objection and the amount of fees or expenses at issue.

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(j) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation or reimbursement of expenses of any professional.

DATED this ____ day of May, 2010 in Jacksonville, Florida.

Paul M. Glenn
Chief United States Bankruptcy Judge

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Local Rule 1007-2 Parties in Interest List