

**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 AN ORDER (I) LIMITING  
NOTICE AND (II) ESTABLISHING NOTICE PROCEDURES**

Michael Phelan, the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Chapter 11 Trustee"), hereby moves this Court (the "Motion"), pursuant to 11 U.S.C. § 105(a) and 1108, as complemented by Rules 2002(m) and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order limiting the persons and entities to whom notice of certain matters be provided, and in support thereof respectfully represents:

**STATEMENT OF FACTS**

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. [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 No. 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 19, 2010, the Chapter 11 Trustee filed Notice of Filing of Bond of Chapter 11 Trustee. [Docket No. 68]

12. 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]

13. 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").

14. On or about April 30, 2010, the Chapter 11 Trustee established a website ([www.cladektrustee.com](http://www.cladektrustee.com)) in order to provide all investors, creditors and parties in interests with relevant information as the case progresses and easy access to significant pleadings filed in the case.

15. On May 5, 2010, the United States Trustee held the first meeting of creditors pursuant to 11 U.S.C. § 341 (the "341 Meeting"). At the 341 Meeting, counsel for the Chapter 11 Trustee circulated a sign-in list to all creditors, investors and parties in interest, requesting that all persons in attendance provide the Chapter 11 Trustee with an electronic mail address for service of pleadings and notices in this case. Approximately 200 investors, creditors and other parties in interest attended the 341 Meeting and 142 of those persons signed in.

#### **VENUE AND JURISDICTION**

16. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2).

17. The statutory predicates for the relief requested herein are sections 105(a) and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), as complemented by Bankruptcy Rules 2002 and 9007.

#### **Standard for Limiting Notice in this Case**

18. Bankruptcy Rule 9007 authorizes the Court to regulate notice procedures. In addition, the Court has the power to limit the number of persons required to be given notice for

certain matters pursuant to Bankruptcy Rule 2002(m), which provides that, "[t]he court may from time to time enter orders designating the matters in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules." Fed. R. Bankr. Proc. 2002(m).

**Reasons for Limiting Notice in this Case**

19. There are undoubtedly hundreds, and perhaps thousands, of creditors in this case, including investors, trade creditors, vendors, utility service providers, landlords and employees.

20. Pursuant to Bankruptcy Rule 2002, the Debtor's creditors and parties in interest have been provided notice of the chapter 11 filing and the meeting of creditors in accordance with 11 U.S.C. § 341.

21. In order to reduce the administrative costs of the Debtor's estate, the Chapter 11 Trustee proposes a "Short List" for notices, which shall include the following:

- (a) The Chapter 11 Trustee and his counsel;
- (b) The Debtor and purported counsel for the prior debtor in possession;
- (c) Lydia I. Cladek;
- (d) The United States Trustee for the Middle District of Florida,  
Jacksonville Division;
- (e) The United States Attorney for the Middle District of Florida;
- (f) The Debtor's twenty (20) largest unsecured creditors, or their respective counsel; *provided, however*, that if an official committee of unsecured creditors is appointed in this case pursuant to 11 U.S.C. § 1102, notice hereunder will be limited to counsel for the committee;
- (g) The District Director of the Internal Revenue Service;

(h) The Florida Department of Revenue;  
(i) The Securities and Exchange Commission;  
(j) All other governmental agencies required to receive notice under the Bankruptcy Rules; and

(k) All parties in interest who serve upon the Chapter 11 Trustee and his counsel and file with the Clerk of Court a request that all notices be mailed to them pursuant to Bankruptcy Rule 2002(g).

22. The Chapter 11 Trustee proposes to serve all motions, notices and other requests only on the persons and entities on the then current Short List; *except* (i) matters specified in Bankruptcy Rules 2002(a)(1), 2002(a)(4) and 2002(a)(7), 2002(b), 2002(d) and 2002(f)(3) (the times allowed for filing claims pursuant to Bankruptcy Rule 3002); (ii) matters in which the applicable rules or orders of this Court permit service on fewer parties than those included on the Short List; and (iii) for matters directly affecting a party in interest, that party will be served as well.

23. For all matters except those listed in sub-paragraphs (i) and (iii) of the foregoing paragraph, services to those persons and entities on the then current Short List, shall be deemed sufficient notice in this case.

24. Moreover, with respect to any party in interest otherwise entitled to receipt of a hard copy of a pleading filed in this case, the Chapter 11 Trustee proposes that he be authorized to serve, in lieu of a complete copy of the pleading, a one-page notice of the filing (i) identifying the pleading, (ii) specifically noting that such pleading will be made available for download on his website ([www.cladektrustee.com](http://www.cladektrustee.com)) in portable document format (PDF), and (iii) making such pleading available for download as set forth above. Alternatively, the Chapter 11 Trustee

proposes that he be authorized to serve, in lieu of regular mail, a complete copy of any pleading via electronic mail to those creditors, investors and parties in interest who submitted their electronic mail addresses at the 341 Meeting or subsequently provide electronic mail addresses and consent to service by electronic mail.

25. The Chapter 11 Trustee believes the proposed Short List and notice procedures are fair and reasonable under the circumstances and in the best interest of the Debtor's estate and its creditors.

26. This Motion is without prejudice to the rights of any party in interest, for cause shown, to request different notices procedures with respect to any particular entity or matter.

### **CONCLUSION**

WHEREFORE, the Chapter 11 Trustee request the entry of an order (i) establishing uniform notice procedures in this case in substantially the form annexed hereto as Exhibit A, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: May 17, 2010.

AKERMAN SENTERFITT

By: /s/ Jacob A. Brown  
Jacob A. Brown  
Florida Bar Number: 0170038  
Email: jacob.brown@akerman.com  
Steven R. Wirth  
Florida Bar Number: 170380  
Email: steven.wirth@akerman.com  
50 North Laura St., Suite 2500  
Jacksonville, FL 32202  
Telephone: (904) 798-3700  
Facsimile: (940) 798-3730

Attorneys for the Chapter 11 Trustee

**EXHIBIT A**

**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 LIMITING NOTICE AND ESTABLISHING NOTICE PROCEDURES**

This matter came before the Court upon the motion (the "Motion")<sup>1</sup> of Michael Phelan, the Chapter 11 Trustee of the consolidated Chapter 11 cases of Lydia Cladek, Inc., pursuant to 11 U.S.C. §§ 105(a) and 1108 and Rules 2002(m) and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order limiting the persons and entities to whom notice of certain matters be provided; and the Court having reviewed the Motion; and the Court having held an hearing on the Motion on June 9, 2010 (the "Hearing"); and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) notice of the Motion and the Hearing was sufficient under the circumstances and no other or further notice need be given; and (iv) the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein, and the objections, if any, to the relief requested in the Motion having been overruled;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

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<sup>1</sup> Capitalized terms used but not specifically defined herein shall have the respective meanings ascribed to them in the Motion.

2. All motions, notices and other pleadings other than those required by Bankruptcy Rules 2002(a)(1), 2002(a)(4), 2002(a)(5), 2002(a)(7), 2002(b) and 2002(f), need be served only on the "Short List" as hereinafter designated, unless the Court orders otherwise as to a specific person, entity or matter. Notices shall be provided to all creditors and parties in interest of those matters described in the aforementioned Bankruptcy Rules.

3. For purposes of this case, the "Short List" shall include:

- (a) The Chapter 11 Trustee and his counsel;
- (b) The Debtor and purported counsel for the prior debtor in possession;
- (c) Lydia I. Cladek;
- (d) The United States Trustee for the Middle District of Florida, Jacksonville Division;
- (e) The United States Attorney for the Middle District of Florida;
- (f) The Debtor's twenty (20) largest unsecured creditors, or their respective counsel; *provided, however*, that if an official committee of unsecured creditors is appointed in this case pursuant to 11 U.S.C. § 1102, notice hereunder will be limited to counsel for the committee;
- (g) The District Director of the Internal Revenue Service;
- (h) The Florida Department of Revenue;
- (i) The Securities and Exchange Commission;
- (j) All other governmental agencies required to receive notice under the Bankruptcy Rules; and

(k) All parties in interest who serve upon the Chapter 11 Trustee and his counsel and file with the Clerk of Court a request that all notices be mailed to them pursuant to Bankruptcy Rule 2002(g).

4. Any creditor or party in interest desiring to be added to the "Short List" shall file their request, noting a mailing address and telephone number, with the Clerk, United States Bankruptcy Court, Middle District of Florida, 300 N. Logan Street, Suite 3-350, Jacksonville, Florida 32202 and serve a copy of same on (i) Michael Phelan, Chapter 11 Trustee, 6861 S.W. 196th Ave., Bldg. 200, Ft. Lauderdale, FL 33332 and (ii) counsel for the Chapter 11 Trustee, Akerman Senterfitt, 50 North Laura Street, Suite 2500, Jacksonville, Florida 32202, Attn: Jacob A. Brown, Esq. and Steven R. Wirth, Esq.

5. With respect to any party in interest otherwise entitled to receipt of a hard copy of a pleading filed in this case, the Chapter 11 Trustee is authorized to serve, in lieu of a complete copy of the pleading, a one-page notice of the filing (i) identifying the pleading, (ii) specifically noting that such pleading will be made available for download on his website ([www.cladektrustee.com](http://www.cladektrustee.com)) in portable document format (PDF), and (iii) making such pleading available for download as set forth above. Alternatively, the Chapter 11 Trustee is authorized to serve, in lieu of regular mail, a complete copy of any pleading via electronic mail to those creditors, investors and parties in interest who submitted their electronic mail addresses at the 341 Meeting or subsequently provide electronic mail addresses and consent to service by electronic mail.

6. This Order is without prejudice to the rights of any party in interest, for cause shown, to request different notices procedures with respect to any particular entity or matter.

7. A copy of this Order shall be furnished on all known creditors and parties in interest.

8. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of the Order and the relief requested in the Motion.

DATED: June \_\_\_\_\_, 2010, at Jacksonville, Florida.

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Paul M. Glenn  
Chief United States Bankruptcy Judge

Copies furnished to:

Lydia Cladek, Inc.  
108 Seagrove Main Street  
St. Augustine, Florida 32080

Lydia I. Cladek  
189 Sea Colony Parkway  
St. Augustine, FL 32080

Lawrence Lilly, Esq.  
336 Redwing Lane  
St. Augustine, Florida 32080-7979

Jacob A. Brown, Esq.  
Akerman Senterfitt  
50 North Laura Street, Suite 2500  
Jacksonville, FL 32202

Elena L. Escamilla, Esq.  
United States Trustee  
135 W Central Blvd Suite 620  
Orlando, Florida 32806

Michael Phelan  
Chapter 11 Trustee  
6861 S.W. 196th Ave.  
Bldg. 200  
Ft. Lauderdale, FL 33332

and all known creditors and parties in interest.