

**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 RESPONSE IN OPPOSITION TO MOTION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO COMBINE
DISCLOSURE STATEMENT AND CONFIRMATION HEARING**

Michael Phelan, as the chapter 11 trustee (the "Chapter 11 Trustee") of the consolidated Chapter 11 cases of Lydia Cladek, Inc. (the "Debtor"), hereby files this response in opposition to the motion (the "Motion") of the Official Committee of Unsecured Creditors (the "Committee") to combine the hearing on the disclosure statement (the "Disclosure Statement") and plan of reorganization (the "Plan") filed by the Committee, and in support thereof states as follows:

BACKGROUND

1. On April 2, 2010, several petitioning creditors filed an involuntary Chapter 11 petition against the Debtor, 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. [Docket No. 111].

7. On July 2, 2010, the Chapter 11 Trustee filed a Motion to Approve the Sale of Substantially All of the Debtor's Performing Assets, consisting of those automobile loans less than 180 days past due (the "Sale of the Performing Assets") [Docket No. 152], and on July 6, 2010, the Chapter 11 Trustee filed a Motion to Approve the Sale of Substantially All of the Debtor's Non-Performing Assets, consisting of those automobile loans greater than 180 days past due (the "Sale of the Non-Performing Assets") [Docket No. 158].

8. On August 9, 2010, the Committee filed Objections to the Sale of the Performing Assets [Docket No. 214] and the Non-Performing Assets (collectively, the "Objections") [Docket No. 215].¹

¹ The Committee's Objections were based upon the assertion that (i) a reorganization of the Debtor's business was in the best interest of the creditors of the estate, and (ii) if the Court were to approve the sales, the Committee would be prevented from exercising its right to submit a plan of reorganization, and thus deprived of its due process rights under the Bankruptcy Code. In response, the Chapter 11 Trustee asserted that (i) the sales were supported by sound

9. On August 12, 2010, the Court held hearings on the Sale of the Performing Assets and Non-Performing Assets. At the hearing, the Committee withdrew its Objection to the Sale of the Non-Performing Assets and that sale was approved by the Court by Order dated August 19, 2010 [Docket No. 224]. With respect to the Sale of the Performing Assets, the Court determined that, while the Chapter 11 Trustee's motion was supported by sound business judgment, the unsecured creditors should have the chance to **evaluate the opportunity** of maximizing the Performing Assets through a subsequent restructuring **or sale**. *See* August 12, 2010 Hearing Transcript Excerpt at p. 9, a copy of which is annexed hereto as Exhibit A. Counsel for the Committee also indicated that he would work together with the Chapter 11 Trustee to propose a **joint plan of reorganization** which would include a restructuring of certain of the Debtor's assets **and** an option for unsecured creditors to liquidate their claims.

10. On September 30, 2010, counsel for the Chapter 11 Trustee and counsel for the Committee entered into a confidentiality agreement (the "Confidentiality Agreement") in order to facilitate the Committee's participation in the formulation of a joint plan of reorganization with the Chapter 11 Trustee, and to otherwise encourage the free flow of confidential information between the parties. *See* Confidentiality Agreement at p. 2, a copy of which is annexed hereto as Exhibit B. Pursuant to the Confidentiality Agreement, the use of the confidential material was restricted to the Committee's drafting of a **joint plan of reorganization with the Chapter 11 Trustee and his counsel** in connection with the Debtor's bankruptcy case and could not be used for any other purpose. *See* Confidentiality Agreement, ¶3.

business judgment and were in the best interest of the estate, (ii) the Committee's proposed reorganization was not feasible and not in the best interest of creditors, and (iii) approval of the sales did not foreclose the Committee's opportunity to reorganize the Debtor's affairs.

11. Immediately subsequent to entering into the Confidentiality Agreement, the Chapter 11 Trustee provided the Committee with unfettered access to his confidential information in order to facilitate the drafting of a joint plan of reorganization. In addition, at all relevant times, counsel for the Committee represented to the Chapter 11 Trustee that the Committee intended to advance a joint plan with the Chapter 11 Trustee. On October 1, 2010, counsel for the Committee circulated to counsel for the Chapter 11 Trustee a draft disclosure statement in support of a joint plan.

12. On October 4, 2010, counsel for the Chapter 11 Trustee circulated certain key provisions to a joint plan of reorganization (the "Key Plan Provisions") to the Committee, and on October 6, 2010 met with counsel to the Committee and its proposed financial advisor regarding the joint plan. During a subsequent telephone call, counsel for the Committee represented that he would review the Chapter 11 Trustee's Key Plan Provisions and confer back with the Chapter 11 Trustee regarding continued discussions on advancing a joint plan. However, notwithstanding counsel for the Committee's prior representations, the Committee did not respond to the Chapter 11 Trustee's Key Plan Provisions. Instead, despite all prior representations to the contrary, the Committee filed its own Disclosure Statement and Plan on October 28, 2010 [Docket Nos. 294 – 295]. In addition, the Committee filed the within Motion seeking to combine the hearing on approval of the Disclosure Statement and Plan during the week of December 22, 2010.

13. As will be shown below, the Committee's Motion impermissibly seeks to combine the hearings on the Disclosure Statement and Plan in this case. In addition, the Committee's Disclosure Statement does not contain an adequate description of how its Plan will be funded, including key information regarding the source, terms and conditions of the Committee's cash flow and financial projections. The Committee has also engaged in inappropriate and premature

Plan solicitations,² and the Committee and its counsel have breached the Confidentiality Agreement by utilizing certain of the Chapter 11 Trustee's confidential information in connection with its Disclosure Statement and Plan.³ Additionally, the Committee's Plan is neither feasible nor in the best interest of creditors and the estate. Given these infirmities, it is impossible for creditors to rely upon the Committee's Disclosure Statement in order to timely make an educated decision regarding the Committee's Plan.

14. As a result of all of the foregoing, the Chapter 11 Trustee intends to pursue significant discovery regarding a number of issues, including the viability/confirmability of the Plan and the improper conduct of the Committee and its counsel. For these reasons and the reasons that follow, the Committee's Motion, which seeks to subvert the plan solicitation requirements mandated by section 1125(b) of the Bankruptcy Code, should be denied. It should be noted, however, that the Chapter 11 Trustee remains committed to working with the Committee toward proposing a joint plan of reorganization that is feasible and in the best interest of the creditors of the estate; *to wit*, a plan that provides creditors with (i) the option of

² See email from Noel Yell, Chairperson of the Committee, to investors dated October 21, 2010, a copy of which is annexed hereto as Exhibit C (mischaracterizing the Court's August 12, 2010 ruling and otherwise constituting an improper Plan solicitation); see also *In re Gilbert*, 104 B.R. 206, 214 (Bankr. W.D. Mo. 1989) (determining that an oral communication before the disclosure statement was approved that a creditor "hoped" another creditor would vote for a plan was an improper solicitation). For several weeks, the Committee also posted on its website a summary of the August 12th hearing that mischaracterized the Court's ruling by indicating that the Court **directed** the Committee to file a restructuring plan. That is simply not true. As noted above, the Court determined that, while the Chapter 11 Trustee's sale motion was supported by sound business judgment, the unsecured creditors should have the chance to **evaluate the opportunity** of maximizing the Performing Assets through a subsequent restructuring **or sale**.

³ Committee's counsel also had inappropriate communications with at least one of the Debtor's employees without the Chapter 11 Trustee's consent. See Rule 4-4.2, Florida Rules of Professional Conduct (providing that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer."); see also September 28, 2010 time entry in Burr & Forman October 2010 invoice, a copy of which is annexed hereto as Exhibit D (noting "telephone conference with K Colby [Debtor employee] re ROI analysis and confirmation that Pitcher [Debtor employee] acting to repossess vehicles with balances due under \$1,000").

participating in the Committee's proposed reorganization, or alternatively, (ii) the opportunity to elect cash payments from assets of the estate.

OBJECTION

A. The Committee's Motion Impermissibly Seeks to Combine the Hearing on the Disclosure Statement and the Plan in this Case

15. As a preliminary matter, the Committee's Motion should be denied because it impermissibly seeks to combine the hearings on approval of its Disclosure Statement and Plan. A bankruptcy court may only combine the hearings on approval of a disclosure statement and plan in two limited circumstances: (1) In cases involving small business debtors; and (2) In cases involving prepackaged plans. *See, e.g., In re Amster Yard Assocs.*, 214 B.R. 122, 123 (Bankr. S.D.N.Y. 1997).⁴ In *Amster Yard Assocs.*, a secured creditor filed a disclosure statement and an *ex parte* application for preliminary approval of its disclosure statement to permit immediate solicitation, combine the disclosure statement and confirmation hearings, and grant related relief. As in this case, the debtor in *Amster Yard Assocs.* did not qualify for small business treatment because its debts were in excess of the statutory limit.⁵

16. As an initial matter, the bankruptcy court in *Amster Yard Assocs.* determined that entering a scheduling order providing for combined hearings under section 105 of the Bankruptcy Code in the circumstances of the case clashed with section 1125's limitations on combined hearings. *See Amster Yard Assocs.*, 214 B.R. at 124. Applying the provisions of section 105(d) that the court cannot enter an order under that section that conflicts with other sections of the Bankruptcy Code or Rules, the bankruptcy court held that section 105(d) "does not authorize [the

⁴ *See also* 11 U.S.C. § 101(51D) (defining small business debtor as a debtor whose debts are less than \$2,343,300 excluding debts owed to affiliates or insiders); 11 U.S.C. § 1125(f)(3) (providing that in a case involving a small business debtor, notwithstanding section 1125(b), "the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.").

⁵ As of the date hereof, there were 1,048 claims filed aggregating \$110,457,543.01.

court] to approve the disclosure statement subject to a final hearing, or under the circumstances of this case, to combine the disclosure statement and confirmation hearings.” *Id.* In other words, the bankruptcy court held that an order combining the disclosure statement and confirmation hearings is “inconsistent with Section 1125 except in prepackaged cases or ‘small business’ cases.” *Id.* The court also noted that the potential problems resulting from combined hearings include that plan proponents would be less willing to make modifications that could nullify votes they had already solicited and courts may be reluctant to delay confirmation based on shortcomings that might have foreclosed approval of the disclosure statement if the hearings had not been combined. *See id.* at 125.

17. This case, just as in *Amster Yard Assocs.*, does not qualify for conditional approval of the Disclosure Statement or combined hearings on the Disclosure Statement and Plan because the Debtor is not a small business debtor and the Committee's Plan is not prepackaged. In addition, just as in *Amster Yard Assocs.*, the potential problems with such a procedure in this case are many, particularly given that the thousands of domestic and foreign creditors herein have not yet had an opportunity to be heard on the proposed course of action of this case.⁶ Combined hearings are also wholly inappropriate in this case because of the myriad infirmities identified below regarding the Committee's Disclosure Statement and Plan.

B. The Committee's Disclosure Statement Lacks Adequate Information

18. Section 1125 of the Bankruptcy Code provides that a plan proponent may not solicit the acceptance or rejection of a plan unless, before such solicitation, the plan proponent transmits to the parties to be solicited, the plan and a disclosure statement, containing “adequate information” which has been approved by the Bankruptcy Court, after notice and a hearing. *See*

⁶ The Chapter 11 Trustee understands that many of the foreign creditors, including those from Venezuela, will require a alternative method for solicitation other than mail as it often times takes several weeks for delivery thereof.

11 U.S.C. § 1125(a)(1). In addition, “Section 1129(a)(11) requires the plan proponent to show concrete evidence of a sufficient cash flow to fund and maintain both its operations and obligations under the plan.” *S&P, Inc. v. Pfeifer*, 189 B.R. 173, 183 (Bankr. N.D. Ill. 1995).

19. It is indisputable that the Committee's Disclosure Statement does not provide sufficient information that would enable a hypothetical creditor to make any determination as to the viability and/or confirmability of the Committee's Plan. Among other things, the Committee's Disclosure Statement is inadequate for the following reasons. First, the Committee's Disclosure Statement only contains cursory information regarding the Committee's funding of its Plan, and fails to include key information regarding the source, terms and conditions of the Committee's cash flow and basis for its projections. Second, the Committee has failed to include a feasibility analysis sufficient to demonstrate the viability and/or confirmability of the Committee's Plan.

20. Moreover, the only financial detail contained in the Disclosure Statement is a one-page summary of liquidation options and a one-page balance sheet that shows increasing total equity each year. Significantly, in the unlikely event that the Committee's projections are flawless after five years, the Committee shows a portfolio with a net principal balance of \$11,409,186. However, based on the actual sales prices for these types of assets, liquidation would likely yield, at best, fifty cents on the dollar (totaling \$5,704,593). In addition, given the inherent risk of the industry, the rate of return on investments of this type would more likely approximate 13%. Thus, when the Committee's likely collections on its five-year portfolio of \$5,704,593 are discounted to present value at 13%, the actual portfolio value for distribution purposes totals approximately \$3,096,224. This amount approximates the total amount which will be in possession of the Chapter 11 Trustee shortly, and if distributed immediately would pose no additional risk to creditors.

21. Accordingly, it is respectfully submitted that the Committee's Disclosure Statement neither provides "adequate information" as required by section 1125 of the Bankruptcy Code, nor concrete evidence of a sufficient cash flow to fund and maintain both the reorganized entities' operations and obligations under the Plan, as required by section 1129 of the Bankruptcy Code.

C. The Committee's Proposed Plan is Not Feasible

22. Section 1129 of the Bankruptcy Code sets forth the conditions necessary to have a plan confirmed. The plan proponent bears the burden of establishing to the satisfaction of the Court that the conditions set forth in section 1129 have been satisfied. *See, e.g., In re Briscoe Enter., Ltd., II*, 994 F.2d 1160, 1165 (5th Cir. 1993). Among the statute's requirements, section 1129(a)(11) provides:

(a) The court shall confirm a plan only if all of the following requirements are met:

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11). Colloquially, this prerequisite to plan confirmation is referred to as "feasibility." A proposed plan that is not feasible cannot be confirmed by the Court.

23. When assessing the future commercial viability of a debtor's business, the question of feasibility under section 1129(a)(11) is fundamentally one of whether the debtor has the ability to meet its future obligations, both as provided for in the plan and as may be incurred in its business operations. *See 7 Collier on Bankruptcy*, ¶ 1129.02[11]. "In this respect, 'section 1129(a)(11) requires the plan proponent to show concrete evidence of a sufficient cash flow to

fund and maintain both its operations and obligations under the plan.” 7 Collier on Bankruptcy ¶ 1129.03[11], at 1129-65 (quoting *S & P, Inc. v. Pfeifer*, 189 B.R. at 183) (citations omitted).

24. Here, the Committee's projections are purportedly based upon an economic model used in the sub-prime automobile finance industry. These projections fail to recognize that, *inter alia*, the sub-prime automobile finance industry is competitive, has inherent risk, and is subject to legislative changes that could negatively impact the industry. Additionally, the Committee has not determined, with any reasonable degree of accuracy or reliability, the true cost to the estate for a reorganization of this nature, and therefore reliance on the Committee's projections is misguided. *See, e.g., In re Sagewood Manor Associates LP*, 223 B.R. 756, 762 (Bankr. D. Nev. 1998) (“[W]here the financial realities do not accord with the proponent's projections or where the projections are unreasonable, the plan should not be confirmed.”).

25. Moreover, the Committee's Plan fails to demonstrate through concrete evidence that the reorganized entities will be able to fund and maintain both their operations and obligations under the Plan. Quite simply, there is no certainty that the Committee's proposed reorganization is feasible -- and, significantly, the Committee fails to include a feasibility analysis sufficient to demonstrate the viability and/or confirmability of the Committee's Plan.

26. Presently, the creditors of the estate have virtually no reassurance that these projections will, in fact, be reached. Given the absence of any reasonable reassurance that the Debtor is capable of reorganizing in the way the Committee projects, approving the Plan on the basis of the mere hope or the opportunity to reorganize, irrespective of the projected monetary return to creditors under such reorganization, is not in the best interest of the creditors of this estate.

D. The Committee's Proposed Plan is Not in the Best Interest of Creditors

27. Section 1129(a)(7) of the Bankruptcy Code provides, in relevant part, that the Court “shall confirm a plan only if” each creditor in an impaired class “(i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.” 11 U.S.C. § 1129(a)(7). The section is often referred to as the “best interest of creditors test”. *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) (“Subsection 1129(a)(7) incorporates the former ‘best interest of creditors’ test and requires a finding that each holder of a claim or interest either has accepted the plan or has received no less under the plan than what he would have received in a Chapter 7 liquidation.”).

28. “In order to show that a payment under a plan is equal to the value that the creditor would receive if the debtor were liquidated, there must be a liquidation analysis of some type that is based on evidence and not mere assumptions or assertions.” *In re Adelphia Communications Corp.*, 361 B.R. 337, 366-67 (S.D.N.Y. 2007), *appeal dismissed*, 367 B.R. 84 (S.D.N.Y. 2007) (internal quotations and footnotes omitted). Here, the Committee's one-page liquidation analysis and “pie-in-the-sky” reorganization projections are not based on evidence, but rather mere assumptions. As noted above, among other things, the Committee's projections fail to recognize that the sub-prime automobile finance industry is competitive, has inherent risk, and is subject to legislative changes that could negatively impact the industry. Additionally, the Committee has not determined, with any reasonable degree of accuracy or reliability, the true cost to the estate for a reorganization of this nature, and therefore reliance on the Committee's projections is misguided. Moreover, the Committee's Plan fails to demonstrate through concrete

evidence that the reorganized entities will be able to fund and maintain both their operations and obligations under the Plan. Based on the foregoing, the Committee's Plan fails to meet the "best interest of creditors" test under section 1129(a)(7) of the Bankruptcy Code.

29. The Chapter 11 Trustee has proposed to the Committee key terms of a joint plan of reorganization which provides creditors with the option of participating in the Committee's proposed reorganization, or alternatively, the opportunity to elect immediate payment from the proceeds of the Debtor's assets. In fact, counsel for the Committee has repeatedly represented to the Chapter 11 Trustee that he would pursue a plan of this nature. The Chapter 11 Trustee believes that a plan of this nature will provide a more equitable result for the thousands of creditors which have not yet had an opportunity to be heard on the proposed course of action of this case.

CONCLUSION

30. For the foregoing reasons, the Chapter 11 Trustee respectfully requests that the Court: (i) deny the Committee's Motion to combine the hearings on its Disclosure Statement and Plan so that the Chapter 11 Trustee may take discovery on the issues identified herein; (ii) deny approval of the Committee's Disclosure Statement until it corrects the infirmities identified herein; and (iii) grant the Chapter 11 Trustee such other relief as the Court may deem to be just and appropriate. The Chapter 11 Trustee specifically reserves his right to object in greater detail to the Disclosure Statement and/or confirmation of the Committee's Plan or any subsequent plan of reorganization to the extent that the Committee proceeds to confirmation with respect to such plan or plans, on any basis allowable under the Bankruptcy Code and applicable law.

Dated: November 8, 2010.

AKERMAN SENTERFITT

By: /s/ Jacob A. Brown

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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 8th day of November, 2010 to all parties on the attached Amended Official Service list.

/s/ Jacob A. Brown _____

Attorney

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Case No.: 3:10-bk-2805-PMG
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Exhibit A

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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

LYDIA CLADEK, INC.,

Debtor.

CASE NO. 10-02805-3G1

TRANSCRIPT OF PROCEEDINGS

E X C E R P T

Various Objections held before Chief Judge Paul M. Glenn, United States Bankruptcy Judge, Courtroom 4A, 300 North Hogan Street, Jacksonville, Florida, Thursday, August 12, 2010, to commence at 4:00 p.m., as reported by Loretta D. McDonald, a Notary Public in and for the State of Florida at Large.

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P R O C E E D I N G S

August 12, 2010

4:00 p.m.

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THE COURT: All right. Thank y'all very much.

I guess I expected to have an interesting hearing this afternoon, and it's been a very interesting hearing. I have to you thank all of you: Mr. Brown, Mr. Phelan, Mr. Kane, Mr. Imler, Mr. Ellyson. I think all of your testimony was -- all of your arguments and all of your testimony was very good and very interesting.

This really shouldn't be an adversary hearing, because I think, as we all recognize, the goal here is to maximize the return for all of these investors. The circumstances of this debtor has been very unfortunate from the investor's point of view. And it's the goal of the trustee, it's the goal of the unsecured creditors to get the best and most reasonable return for the investors.

So, we're here to consider the trustee's motion to sell the performing assets and the objection to the unsecured creditors to that. The objection to the sale of the nonperforming

1 assets has been withdrawn, and so those will be
2 sold, I assume.

3 The trustee, Mr. Phelan: clearly
4 qualified, outstanding education, outstanding
5 experience, experience with large creditors,
6 experience with large companies and small
7 companies, experience evaluating liquidating
8 companies and reorganizing companies. He is
9 clearly experienced in the area and clearly an
10 expert in the area.

11 He came into this -- he stepped into a very
12 difficult situation. He has operated the
13 company to some respects. He's made a thorough
14 examination of the records of the company.

15 Apparently, they had to reconstruct much of
16 the records, particularly, the recent records
17 of the company. Apparently, tax returns had
18 not been filed for some years, some
19 transactions had not been recorded.

20 The company was not in good operational
21 circumstances or financial condition, and he
22 had to step into this. He became as familiar
23 as he could with the company. He analyzed past
24 records. He analyzed the loan portfolio. He
25 analyzed the performance of the company.

1 These are substandard auto loans. It's a
2 unique business, as we have all recognized.
3 He's looked at the values of the loans. He's
4 looked at the amounts outstanding on the loans,
5 the terms of the loans, the interest rates on
6 the loans.

7 There has been some discussion about the
8 differences in default rates. I think I
9 understand those discussions. There are ranges
10 of default. There are different types of
11 events that are characterized as defaults.

12 In any event, I think I understand the
13 testimony. And what he stepped into was not a
14 situation where information was easily obtained
15 to -- obtainable and at the outset
16 reorganization didn't appear possible.

17 So, I understand his views. I understand
18 the solicitation of bids, and I think he has
19 exercised sound judgment in filing his motions
20 to sell the assets.

21 But I turn to the unsecured creditors. At
22 first view I look to Mr. Imler. He does not
23 have experience in the industry. He tried to
24 get industry information. There is the
25 testimony of getting information over the

1 Internet. Information over the Internet in
2 some instances is admissible some instances is
3 not admissible.

4 If he used it, we don't know the industries
5 that he really examined, but he indicated and
6 he tried to find close enough information to
7 this debtor to the substandard automobile loan
8 industry in order to evaluate and make
9 projections and to evaluate the trustee's
10 information.

11 Additionally, he has the incentive to do
12 that, as do the unsecured creditors, because it
13 is they who are facing significant losses. His
14 testimony was \$400,000 for himself and his
15 wife, additional amounts for his daughter and
16 his son son-in-law. There are other investors
17 with substantial assets, which they have
18 invested and which are important to them
19 personally.

20 He's an engineer. He is very analytical.
21 He attempted to get as much information as he
22 could. He attempted to get it as quickly as he
23 could because of the circumstances of the case.
24 He analyzed it in variable ways.

25 And when differences were pointed out to

1 him, he tried to accommodate those differences.
2 And the differences in the ultimate result and
3 the projections between the sale and the
4 operations for a period of time are
5 substantial. They're not a couple of \$100,000.
6 They are substantial numbers. And where the
7 trustee identified weaknesses in his
8 projections, he attempted to correct those.

9 He makes no guarantees. He doesn't
10 necessarily know the market for various things,
11 but he developed these projections as well as
12 he could with information provided by the
13 trustees and with the resources that he could
14 find for similar businesses.

15 Mr. Ellyson testified that his experience
16 is limited. He apparently has done a good bit
17 of investigating in the area but does not have
18 extensive experience in the area. But,
19 nonetheless, Mr. Imler took his experience and
20 his advice into consideration in making his
21 projections. And that experience gives
22 Mr. Imler's projections some credibility.

23 They have credibility regardless of that
24 advice, but that gives them additional
25 credibility.

1 The goal here is to maximize the value.
2 The trustee is qualified, but it is the
3 unsecured creditors that have their funds at
4 risk. And it's the unsecured creditors that
5 have developed projections that show a material
6 difference in the methods of handling these
7 assets.

8 These assets are all that remain. To sell
9 them is to sell everything. To continue to
10 operate offers some prospect. Clearly, there
11 are risks in continued operation. There may or
12 may not be market for better quality loans for
13 longer term loans, higher principal loans.
14 There may be a market. There's been some
15 examination of that.

16 There are problems in operations. There
17 will need to be managers. There will need to
18 be contacts. There will need to be sales.
19 This isn't a projection that is made with
20 certainty. And I think Mr. Imler recognizes
21 that, and the unsecured creditors recognize
22 that.

23 There is some risk of deterioration of
24 assets if the sale is postponed.

25 But the unsecured creditors have done their

1 best to address the criticisms. The
2 differences are substantial. It is the only
3 asset. It's the only way they have to maximize
4 the return to the unsecured creditors.

5 I might not make this investment
6 personally. I think they might not make this
7 investment personally if they were doing it
8 fresh, but they're not doing it fresh. They
9 are doing it to try to recover what they can
10 from the assets of the company. They're faced
11 with substantial losses and trying to recover.

12 So I think it's appropriate, although, this
13 decision was made with sound business judgment
14 by the trustee, I think the unsecured creditors
15 have given an analysis to that, have shown that
16 there are other possibilities with
17 substantially greater returns. And I believe
18 they should have the opportunity to develop
19 those.

20 So I don't think that we should have the
21 sale of the performing assets on August 19, and
22 that motion should be denied.

23 I hope that there will be continued
24 cooperation. I believe that there will be
25 continued cooperation, and I hope that there

1 will be continued cooperation.

2 And if a subsequent sale seems best, then
3 file a motion. If it's necessary to have that
4 subsequent sale by September 1, come in with an
5 agreement on an emergency motion or with
6 subsequent analyses. And, as you know, we will
7 hear those because it is all of our goal to
8 maximize the assets.

9 But it appears that the unsecured creditors
10 should have the opportunity to evaluate
11 maximizing these assets. If selling is
12 appropriate, that's one thing. If a plan is
13 appropriate, that's another. If competing
14 plans are appropriate, that gives all the
15 unsecured creditors the opportunity to vote.
16 But it is the unsecured creditors that have
17 their funds at risk.

18 So I think that that's the appropriate
19 result after this testimony.

20 I compliment all of the lawyers and all of
21 the witnesses. I appreciate the testimony.
22 It's been very interesting. I think that is
23 the appropriate conclusion that's reached.

24 I'll prepare orders.

25 Thank you all very much.

1 (Whereupon, at 11:09 p.m., on Thursday,
2 August 12, 2010, the hearing in the
3 above-entitled matter was concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF DUVAL)

I, Loretta D. McDonald, Professional Court Reporter, do hereby certify that the attached material represents an excerpt of the original records of proceedings before the United States Bankruptcy Court, Middle District of Florida, Jacksonville Division, before the Chief Judge Paul M. Glenn, United States Bankruptcy Judge, in the matter of LYDIA CLADEK, INC.; such Record is an accurate and complete recordation of the proceedings which took place. A transcript of this Record has been produced on October 5, 2010, the original of which was delivered to The Transcript Copy Custodian, Jacksonville, Florida.

STATEWIDE REPORTING SERVICE

LORETTA D. MCDONALD

Exhibit B

CONFIDENTIALITY AGREEMENT

IT IS HEREBY AGREED AND STIPULATED by and between MICHAEL PHELAN, as Chapter 11 Trustee of the estate of Debtor, Lydia Cladek, Inc.(the "Trustee") in the case styled *In re Lydia Cladek, Inc.*, with case number 3:10-bk-2805-PMG, pending in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (the "Bankruptcy Case"), and OFFICIAL COMMITTEE OF UNSECURED CREDITORS (the "Committee"), by and through their respective undersigned counsel, hereby enter into this confidentiality agreement and agree as follows:

RECITALS

WHEREAS, on April 2, 2010, several petitioning creditors filed an involuntary Chapter 11 petition against the Debtor, case styled as *In re Lydia Cladek, Inc.*, with case number 10-bk-02800-PMG (the "Involuntary Case"), alleging that Lydia Cladek perpetrated a Ponzi scheme, in which funds received from newer investors were used to pay older investors.

WHEREAS, on April 5, 2010, Lydia Cladek, Inc. filed the instant voluntary Chapter 11 petition (the "Voluntary Case").

WHEREAS, on April 12, 2010, the Court consolidated the Involuntary Case and the Voluntary Case, naming the Bankruptcy Case as the lead case.

WHEREAS, on June 1, 2010, pursuant to Bankruptcy Code section 1102, the United States Trustee appointed the Committee, which consists of seven members.

WHEREAS, the Trustee and the Committee will be submitting to the Court of the Bankruptcy Case a proposed joint plan.

WHEREAS, in order to facilitate the Committee's participation in the formulation of a plan, it will be necessary for the Committee to obtain information related to the amount of monies received and disbursed by the Debtor to perpetuate the alleged Ponzi scheme, which may be in a form compiled and prepared by the Trustee's counsel or other professionals employed in the Bankruptcy Case, and which may also contain confidential, privileged, or proprietary information.

WHEREAS, to ensure that the Committee is able to comply with its obligations under Bankruptcy Code section 1103(c) and to protect the Trustee's confidential, privileged, or proprietary information, the Trustee and the Committee have agreed to maintain and abide by the terms of this confidentiality agreement as defined below.

AGREEMENT

THEREFORE, it is hereby stipulated and agreed to by and between the Trustee and the Committee and their respective counsel that the following Confidentiality Agreement be entered into:

1. Any information obtained by the Committee, the Committee's counsel or the Committee's professionals from the Trustee, Trustee's counsel, and Trustee's professionals shall be considered confidential whether or not marked as "CONFIDENTIAL (hereinafter "Confidential Material")¹. Such Confidential Material shall be maintained in confidence and will be disclosed only to qualified persons as provided in paragraph 2 below.

2. Disclosure of Confidential Materials shall be restricted solely to the following persons:

¹The total amount of monies received and disbursed by the Debtor to perpetuate the alleged Ponzi scheme, as well as total prospective recoveries thereon are not Confidential Material and are not subject to this Confidentiality Agreement.

A. persons employed by the Court in connection with the handling of this Bankruptcy Case;

B. counsel of record for the Committee;

C. office personnel working under the direct supervision of counsel of record or other professionals for the Committee who are informed of the confidential nature of the Confidential Materials and agree to abide by the terms of this Agreement, to the extent counsel of record in good faith believes such disclosure is required to assist him or her in the Bankruptcy Case;

D. for outside experts or consultants of the Committee, to the extent counsel of record in good faith believes such disclosures are necessary and each such person has agreed to be bound by the terms of this Agreement and has executed a certification in the form attached hereto as Exhibit A;

E. witnesses during the course of a deposition, evidentiary hearing or trial, to the extent the Committee or counsel to the Committee in good faith believes such disclosures are necessary and the witnesses are shown the Confidential Material only during preparation for his or her testimony or during the actual testimony and must be informed of the confidential nature of the material. Further, no witness may retain the Confidential Material; and

F. court reporters to the extent necessary during depositions in this case.

3. Moreover, the use of the Confidential Material is restricted to the Committee's drafting of a joint plan of reorganization with Trustee and his counsel in connection with the Bankruptcy Case and may not be used for any other purpose whatsoever.

4. Nothing in this Agreement shall result in a waiver by the Trustee of any objection or opposition to the production of Confidential Material. Additionally, nothing in this Agreement shall preclude the Trustee from seeking and obtaining from the court additional protection with respect to the issues addressed in this Agreement.

5. The dismissal or closing of this Bankruptcy Case shall not thereafter relieve any person to whom Confidential Material was disclosed from the obligation of maintaining the confidentiality of that information in accordance with the provisions of the Agreement.

6. This Agreement shall not waive the parties' rights to enter into additional confidentiality agreements during the course of the Bankruptcy Case.

7. If any Confidential Material is filed with the Court, such documents must be filed under seal.


8. In the event that the Committee, its counsel or any other parties provided the Confidential Material hereunder are requested pursuant to, or are required by, applicable law, regulation or legal process to disclose any Confidential Material, the Committee or its counsel shall, to the extent permitted by law, notify the Trustee as promptly as practicable so that the Trustee may, at its own expense, seek a protective order or other appropriate remedy or waive compliance with the terms of this Agreement. In the event that no such protective order or other remedy is obtained, or that the Trustee waives compliance with the terms of this Agreement, only that portion of the Confidential Material which the Committee is advised by counsel is legally required shall be disclosed and all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Material shall be exercised.

9. It is acknowledged that remedies at law may be inadequate to protect the Trustee against any actual or threatened breach of this Agreement by the Committee, its counsel or any other parties provided the Confidential Material hereunder, and, without prejudice to any other rights and remedies otherwise available to the Trustee, the Committee agrees to the granting of injunctive relief in favor of the Trustee without proof of actual damages or need for posting a bond. In addition, in the event of any action arising out of this Agreement, the prevailing party shall be indemnified and held harmless by the other party from and against any costs or expenses incurred by it in connection with such action, including without limitation reasonable attorneys' fees. The Committee further agrees that no failure or delay by the Trustee in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts executed in and to be performed in that state. This Agreement contains the entire agreement between the Committee and the Trustee concerning the Confidential Material, and no modifications of this Agreement or waiver of the terms and conditions hereof will be binding upon any party hereto unless approved in writing. If any part of this Agreement is held to be unenforceable or invalid under, or in conflict with, the applicable law of any jurisdiction, then the unenforceable, invalid or conflicting part shall be narrowed or replaced, to the extent possible, by a judicial construction in such jurisdiction that effectuates the intent of the parties regarding this Agreement and the unenforceable, invalid or conflicting part, and such part shall be deemed to be amended by such construction. This Agreement shall be

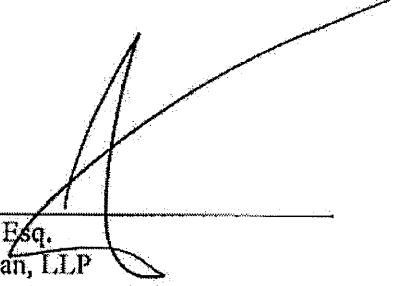
binding upon and inure to the benefit of the parties hereto and their successors and assigns. This Agreement may not be assigned. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

Dated this 30 day of Sept, 2010



Jacob A. Brown, Esq.
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**ATTORNEYS FOR MICHAEL P.
PHELAN, CHAPTER 11 TRUSTEE**



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Email: jkane@burr.com

**ATTORNEYS FOR THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS**

EXHIBIT A

CERTIFICATION

I, _____, am an expert or consultant of the Official Committee of Unsecured Creditors, in the case styled *In re Lydia Cladek, Inc.*, with case number 3:10-bk-2805-PMG, pending in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division and hereby certify and agree to be bound by the terms of the attached Confidentiality Agreement.

NAME: _____

ADDRESS: _____

DATE: _____

Exhibit C

From: Investor Lost <lydiainvestor@yahoo.com>
Date: October 21, 2010 12:02:30 PM EDT
To: Scott <lydiainvestor@yahoo.com>
Subject: Good news about your investment in Lydia Cladek, Inc!

Hi! This is Noel Yell and I have good news regarding your investment in Lydia Cladek, Inc. As the chair person of the LCI Unsecured Creditors Committee, I have been involved in a months-long effort to develop a Plan of Reorganization. That Plan resulted from the Hearing in August where Judge Glenn was moved by our arguments and forecasts, and directed us to develop a Formal Plan of Reorganization and accompanying Disclosure Statement. You will be receiving these documents in the mail in the next month or two, so you need to familiarize yourself with the Plan and the forecast returns before you vote. We have established a UCC website at www.burr.com/clients/cladek/ and you should check it often to keep up with the issues and actions. Also, we have established a toll free number at 1-866-443-1597 where you can leave questions or concerns and a real person will call you back! Please know that the Committee has been working diligently to maximize the return on your investment, and hopes through this reorganization we can restore some of our losses. Please stay tuned...and stay informed!

Noel Yell, Chairperson, Unsecured Creditors Committee

Exhibit D

BURR & FORMAN LLP0056386 OFFICIAL CREDITORS COMMITTEE
0000001 Cladek, Lydia12 Oct 2010
Invoice # 616394
Page 8

Date	Description	Atty	Hours
	Fees (.50); consideration of issues related to application for payment of fees of the Chapter 11 Trustee (.20); consideration of issues related to application of payment of fees of Michael Moecker & Associates as accountants (.20)		
09/27/10	Download & index all pleadings from bankruptcy court website from 9/24 - 9/27	CC	0.50
09/28/10	Telephone conference with US Trustee Escamila re issues with Moecker & Assoc. and Ch 11 Trustee fee applications, discussion of application of Sec. 326 of Bankruptcy Code to Trustee's application, discussions re Notice Procedures, Motion & proposed Order thereon (.3); telephone conference with N Yell re talks with S Mumford, allegations that J Pitcher repossessing vehicles and liquidating them for \$300 salvage, Ch 11 Trustee wasting and dissipating assets of estate, issues re ability to reorganize if no accounts or funds remaining (.4); Correspondence with E Buttner re Ch 11 Trustee's estimates of fees and expenses to be incurred through confirmation (.1); telephone conference with C Ellyson re allegations re repossession and sales for salvage if ROI exceeds \$300, notes being reduced and discussion of funds collected on non performing assets (.3); telephone with S Mumford re A Newman salvaging vehicles and turning them over to purchaser of non performing assets for whom he went to work, deals cut between J Pitcher and salvage co., equipment owned by LCI being sold off, Pitcher threatening to fire employees if they do not proceed with liquidating plan, Pitcher claims that all assets will be liquidated within 30 days (.5); Telephone conference with T Imler re draft applications for appointment of Imler, Ellyson and Buttner as professionals, issues re liquidation of vehicles by Ch 11 Trustee (.3); telephone conference with K Colby re ROI analysis and confirmation that Pitcher acting to repossess vehicles with balances due of under \$1,000 (.2); telephone conference with N Yell re issues concerning liquidation of vehicles and discussions with Mumford and Colby (.5); draft correspondence to atty Brown re same, advised that Pitcher has ordered employees to repossess and sell any vehicle that they have calculated to have an ROI greater than \$300, including vehicles that are paid for but still owe late fees or NSF fees, wasting of assets despite request to work towards a reorganization, appears the actions of Pitcher are in direct contradiction of the Trustee's fiduciary duty to preserve the assets of the estate, request for response from Ch 11 Trustee (.7)	JEK	3.30