

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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.

- - -

---

**STATEWIDE REPORTING SERVICE**  
**233 East Bay Street, Suite 606**  
**Jacksonville, Florida 32202**  
**(904) 353-7706 Fax (904) 353-2507**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

JACOB BROWN, Esquire,  
MARK MITCHELL, Esquire,  
Attorney for Michael Phelan.

JON KANE, Esquire  
Attorney for Creditors Committee.

ROBERT WILCOX, Esquire,  
Attorney for Chapter 11 Trustee.

ALLAN WULBERN, Esquire,  
Attorney for Capex Acquisitions, LLC

KAREN SPECIE, Esquire,  
Attorney for Bernard Reller.

- - -

P R O C E E D I N G S

August 12, 2010

4:00 p.m.



1 assets has been withdrawn, and so those will be  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.)

4   - - -

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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