

**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 MOTION FOR  
CRAMDOWN PURSUANT TO 11 U.S.C. § 1129(b)**

Michael Phelan, the chapter 11 trustee (the "Trustee") of Lydia Cladek, Inc. (the "Debtor"), by and through undersigned counsel, pursuant to the cramdown provisions of 11 U.S.C. § 1129(b), moves this Court for the entry of an order confirming his Amended Chapter 11 Plan of Liquidation [Doc. No. 361], and in support thereof states:

**STATEMENT OF FACTS**

**A. 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. The Voluntary and Involuntary Chapter 11 cases of the Debtor were subsequently consolidated by Order of this Court dated April 12, 2010, and the Voluntary Case, Case No. 10-02805, was designated the lead case [Doc. No. 32].

4. By Order dated April 14, 2010, this Court approved the appointment of Michael Phelan as Chapter 11 Trustee [Doc. No. 47].

5. The Trustee is currently operating the Debtor's business pursuant to sections 1106 and 1108 of the Bankruptcy Code.

**B. The Trustee's Amended Plan and Disclosure Statement**

6. On November 23, 2010, the Trustee filed a Chapter 11 Plan of Liquidation and Disclosure Statement in Support of Plan of Liquidation [Doc. Nos. 347-348] and on December 3, 2010, filed his Amended Disclosure Statement and Amended Plan (the "Trustee's Plan") [Doc. Nos. 361 and 362]. The Trustee's Plan provides for the orderly liquidation of the Debtor's Assets<sup>1</sup> and the distribution of the proceeds thereof to creditors as quickly and efficiently as possible. The Trustee's Plan designated the following nine Classes of Claims and Equity Interests:

<u>Class</u>	<u>Claim/Interests</u>	<u>Plan Treatment</u>
Class 1	Secured Claim of Anita Spring	Impaired
Class 2	Secured Claim of Bernard Reller	Impaired
Class 3	Secured Claim of Ralph E. Brown and R&B Investment Trading Company	Impaired
Class 4	Secured Claims – Avoidable Claims	Impaired

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

Class 5	Secured Claim of Banc of America Leasing & Capital LLC	Impaired
Class 6	Secured Claim of CitiCapital Technology Finance, Inc.	Impaired
Class 7	General Unsecured Claims – Convenience Class	Impaired
Class 8	General Unsecured Claims	Impaired
Class 9	Equity Interests	Impaired

7. Administrative and Priority Claims will be paid by the Trustee on the Effective Date or as soon as practicable thereafter. Allowed Secured Claims in Classes 1 through 6 will receive their Collateral as the indubitable equivalent of their respective Allowed Claims. General Unsecured Claims will receive periodic cash distributions from the Liquidating Trust. Equity Interests shall be cancelled and of no further force and effect on the Effective Date.

8. The deadline for holders of claims and interests to file ballots voting to accept or reject the Trustee's Plan was January 18, 2010.<sup>2</sup> Holders of Secured Claims in Class 3 have voted in favor of the Trustee's Plan. Holders of Priority Tax Claims which were unclassified under the Trustee's Plan have voted to accept the Trustee's Plan (such claims were separately classified in Class 2 in the Committee's amended plan of reorganization). In addition, because the holders of Equity Interests will neither receive nor retain any property under the Trustee's Plan, the holders of equity interests are deemed to reject the Trustee's Plan pursuant to section 1126(g) of the Bankruptcy Code. Other creditors either failed to

<sup>2</sup> The amended solicitation procedures order entered by the Court on December 16, 2010 [Doc. No. 388], initially provided for January 17, 2011, a federal holiday (Martin Luther King's Birthday), to be the voting deadline. However, upon the consent of the Committee and Trustee, and by application of Bankruptcy Rule 9006(a)(1)(C), the voting deadline was extended to January 18, 2011.

vote or did not accept the Trustee's Plan. The Trustee seeks approval of his Plan over the no vote or negative vote of such creditors in accordance with 11 U.S.C. § 1129(b).

**CRAMDOWN OF CLASSES THAT DID NOT VOTE OR DID NOT  
ACCEPT THE TRUSTEE'S PLAN IS APPROPRIATE IN THIS CASE**

9. Pursuant to section 1129(b) of the Bankruptcy Code, the Court may, upon request of the plan proponent, confirm a chapter 11 plan notwithstanding the requirement that all classes of claims or interests either be unimpaired under the plan or accept the plan, if the plan of reorganization does not discriminate unfairly and is fair and equitable, with respect to each class of creditors that is impaired under and has not accepted the plan. *See* 11 U.S.C. § 1129(b).

10. Section 1129(b)(2)(A)(iii) of the Bankruptcy Code provides that a plan of reorganization is deemed to be fair and equitable with respect to a class of secured claims if the plan provides for the realization by such holders of the indubitable equivalent of such claims. The Trustee's Plan provides for the Secured Claims to receive the indubitable equivalent of their Allowed Claims and, therefore, the plan may be confirmed notwithstanding the fact that Classes 1, 2, 4, 5 and 6 either did not vote or did not accept the Trustee's Plan.

11. Section 1129(b)(2)(B)(ii) of the Bankruptcy Code provides that a plan of reorganization is deemed fair and equitable as to a class of unsecured claims if the plan provides the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property. Class 7 consists of General Unsecured Claims (Convenience Class) equal to or less than \$1,750 and Class 8 consists of all other General Unsecured Claims. Holders of Class 7

General Unsecured Claims (Convenience Class) shall be paid periodic *pro rata* cash distributions from the Liquidation Trust after the Effective Date, until their Allowed Claims are paid in full. Holders of Class 8 General Unsecured Claims shall also be paid periodic *pro rata* cash distributions from the Liquidation Trust after the Effective Date; *provided, however,* that holders of Allowed Class 8 Claims shall receive no distribution unless and until all Allowed Class 7 Claims are paid in full. Upon the Effective Date, all Class 9 Equity Interests in the Debtor shall be cancelled and have no further force and effect. Thus, there are no interests junior to the unsecured claims described above that will retain any property. Consequently, the Trustee's Plan may be confirmed notwithstanding the fact that Class 7 and Class 8 General Unsecured Claims either did not vote or did not accept the plan.

12. Section 1129(b)(2)(C)(ii) of the Bankruptcy Code provides that a plan of reorganization is deemed fair and equitable as to a class of interests if the plan provides that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property. Class 9 consists of any and all Equity Interests in the Debtor. Upon the Effective Date, all Equity Interests in the Debtor shall be cancelled and have no further force and effect. There are no interests junior to the equity interest that will retain any property. Consequently, the Trustee's Plan may be confirmed notwithstanding the fact that Equity Interests either did not vote or did not accept the plan.

13. The Trustee asserts that all provisions of section 1129(a), except subsection (8) thereof, have been met with respect to the Trustee's Plan. The Trustee further asserts that the Trustee's Plan does not discriminate unfairly and is fair and equitable with respect to each

class of claims or interests that is impaired and has either not accepted the Trustee's Plan or did not vote. In support of confirmation, the Trustee relies on the *Memorandum of Law in Support of Chapter 11 Trustee's Amended Plan of Liquidation* dated January 25, 2011 [Doc. No. 482], which is incorporated herein in its entirety by this reference, and the evidence to be elicited at the confirmation hearing.

**CONCLUSION**

WHEREFORE, the Trustee respectfully requests that the Court enter an order confirming the Trustee's Plan pursuant to the cramdown provisions of section 1129(b) of the Bankruptcy Code, and granting such other and further relief as is just and proper.

Dated: January 26, 2011, in Jacksonville, Florida.

AKERMAN SENTERFITT

By: /s/ Steven R. Wirth

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 3100

Jacksonville, FL 32202

Telephone: (904) 798-3700

Facsimile: (904) 798-3730

*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 on all parties who have consented to receive electronic notifications in this case or U.S. mail, this 26th day of January, 2011 to all parties on the attached Amended Official Service list.

/s/ Steven R. Wirth  
Attorney

Lydia Cladek, Inc.  
Case No.: 3:10-bk-2805-PMG  
**AMENDED OFFICIAL SERVICE LIST**  
**(amended as of January 20, 2011)**

Michael Phelan  
Chapter 11 Trustee  
3613 North 29th Ave.  
Hollywood, FL 33020

Jacob A. Brown, Esq.  
Akerman Senterfitt  
50 North Laura Street, Suite 3100  
Jacksonville, FL 32202

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

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

Maurice C. Grant, II, Esq.  
200 West Forsyth Street  
Room 1240  
Jacksonville, FL 32202

Lydia I. Cladek  
415 Lazy Way, Apt. 1  
Fort Myers Beach, FL 33931

Elena L. Escamilla, Esq.  
United States Trustee  
135 W. Central Blvd., Suite 620  
Orlando, FL 32801

Mac D. Heavener, III, Esq.  
Bonnie A. Glober, Esq.  
United States Attorney's Office  
300 North Hogan Street, Suite 700  
Jacksonville, FL 32202

Jon E. Kane, Esq.  
Burr & Forman, LLP  
450 S. Orange Avenue, Suite 200  
Orlando, FL 32801

Rudolph J. Danowski  
127 Hogsback Road  
Oxford, CT 06478

David J. Rees  
4219 Bunker Dr.  
Quincy, IL 62305

Robert F. Helfferich  
21409-60th Street  
Bristol, WI 53104-9732

Bennett Yell Agency, Inc.  
c/o Bennett Yell  
9075 June Lane  
St. Augustine, FL 32080

Andrea Levinson &  
Michael Egelman  
c/o Michael Egelman  
127 Bonita Road  
St. Augustine, FL 32086

Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 21126  
Philadelphia, PA 19114-0326

Internal Revenue Service  
Special Procedures – Stop 5720  
400 W Bay Street Suite 35045  
Jacksonville, FL 32202

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

Wm. Patrick Fulford, Esq.  
505 Maitland Avenue, Suite 100  
Altamonte Springs, FL 32701

Florida Department of Revenue  
5050 W. Tennessee Street  
Tallahassee, FL 32399-0145

U.S. Securities & Exchange  
Commission  
Reorganization Branch, Atlanta  
3475 Lenox Rd., NE, Ste. 1000  
Atlanta, GA 30326-3235

Charles B. Jimerson, Esq.  
2124 Park Street  
Jacksonville, FL 32204

John R. Stiefel, Jr., Esq.  
One Independent Drive, Suite 2301  
Jacksonville, FL 32202

Undine C. Pawlowski, Esq.  
4075 A1A S., Ste. 200D  
St. Augustine, FL 32080

R. Carter Burgess, Esq.  
McGlinchey Stafford, PLLC  
10752 Deerwood Park Blvd.  
Suite 100  
Jacksonville, FL 32256

David W. Barrett, Esq.  
Fowler White Boggs P.A.  
50 N. Laura Street, Suite 2800  
Jacksonville, FL 32202

Bernard Reller  
4728 NW 38th Street  
Gainesville, FL 32608

Marshall B. Hall  
3123 S. Ponte Vedra Blvd.  
Ponte Vedra, FL 32082-4535

Carolyn S. Fortner, Trustee  
George W. Fortner Credit Trust  
3123 S. Ponte Vedra Blvd.  
Ponte Vedra, FL 32082

Thomas W. Herren  
12815 Huntley Manor Dr.  
Jacksonville, FL 32224

Cynthia Bailey Pyle  
1112 Southeast 22nd Avenue  
Ocala, FL 34471

Sidney Abelski, Esq.  
Abelski & Associates, Ltd.  
180 N. Michigan Ave., Suite 1800  
Chicago, IL 60601

Peter G. Henry  
111 Cardiff Place  
Chapel Hill, NC 27516

Polly Anne Cox  
Betty T. Crisco  
c/o Robbin C. Vernon  
2608 Stratford Drive  
Greensboro, NC 27408

Thomas D. Summerhays  
3615 Pearl Ln  
Waterloo, IA 50702-5507

Alma Obinger  
29 Bayberry Court  
Deptford, NJ 08096

Gregory G. Cook, D.P.M.  
1543 Lakeland Hills Blvd., Suite B  
Lakeland, FL 33805-3246

A. Girouard  
225 North Forest Dune  
St. Augustine, FL 32080

Yvonne Rodriguez  
3424 Serendipity Drive  
Raleigh, NC 27616

Barbara L. Volkmann  
P.O. Box 23914  
San Diego, CA 92193

Ben Bolling  
1921 Fleetwood Drive  
Kingsport, TN 37660

Thomas and Marianne Gilligan  
546 Race Place  
Oakdale, NY 11769

Kenneth and Marcia Cerotzke  
4010 Grand Vista Blvd., Unit 132  
St. Augustine, FL 32084

Robert L. and H. Joyce MacFie  
148 Spartina Avenue  
St. Augustine, FL 32080

Brigitte and Steven Neiswender  
14 King Eider Way  
Taylors, SC 29687

Michael A. Tapio  
112 Lex Ct.  
Greer, SC 29651

Glenn A. Lanzer Jr.  
1710 Timber Ridge Circle  
Corinth, TX 76210

Harold W. Thompson  
Irene E. Thompson  
12 King Eider Way  
Taylors, SC 29687

Don and Fran Page  
634 South 87<sup>th</sup> Way  
Mesa, AZ 85208

Thomas H. Grimm  
Carolyn R. Grimm  
5605 Elwood Circle  
Flowery Branch, GA 30542

Robert D. Wilcox, Esq.  
800 W. Monroe Street  
Jacksonville, FL 32202

John E. Bonjean and  
Joyce A. Bonjean  
1182 Melagano St.  
Deltona, FL 32725

Debbie Cisar  
4204 Wetzal Avenue  
Cleveland, OH 44109

Nina M. LaFleur, Esq.  
LaFleur Law Firm  
Post Office Box 861128  
St. Augustine, FL 32086

Stuart Wilson-Patton, Esq.  
PO Box 20207  
Nashville, TN 37202-0207

Allen and Wendy Harralson  
1571 Doyle Road  
Deltona, FL 32725

Kenneth Hollingsworth  
c/o Laura Beth Faragasso, Esq.  
P.O. Box 14079  
Tallahassee, FL 32317-4079

Michael J. McCabe, Esq.  
Eric S. Vaughn, Esq.  
1400 Prudential Drive, Suite 5  
Jacksonville, FL 32207

Gwen Taylor  
c/o Sharón L. Simmons, Esq.  
300 West Adams St., Ste. 580  
Jacksonville, FL 32202

Darryl Billemeier  
160 Windemere Ln  
Lincoln University, PA 19352

Dan and Tiffany Neiswender  
12415 Plantation Pine Lane #103  
Tampa, FL 33635

Raymond E. Bushey  
6050 Datil Pepper Road  
Saint Augustine, FL 32086

Tennessee Department of Revenue  
c/o Tennessee Attorney General's Office  
Bankruptcy Division  
P.O. Box 20207  
Nashville, TN 37202-0207