

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**In re:**

**CASE NO. : 03:10-bk-02805-PMG**

**LYDIA CLADEK, INC.,**

**Chapter 11**

**(Consolidated by Prior Court Order  
with Case No. 10-bk-02800-PMG)**

**Debtor.**

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**UNITED STATES TRUSTEE'S OBJECTION TO THE AMENDED  
APPLICATION OF MICHAEL P. PHELAN, CHAPTER 11 TRUSTEE OF LYDIA  
CLADEK, INC. FOR INTERIM ALLOWANCE OF COMPENSATION FOR SERVICES  
RENDERED AND FOR REIMBURSEMENT OF EXPENSES INCURRED DURING  
PERIOD OF APRIL 14, 2010 THROUGH AND INCLUDING AUGUST 31, 2010**

The United States Trustee for Region 21, Donald F. Walton, by and through his undersigned counsel, files this Objection to the Amended Application of Michael P. Phelan, Chapter 11 Trustee of Lydia Cladek, Inc., for Interim Allowance of Compensation for Services Rendered and for Reimbursement of Expenses Incurred During the Period April 14, 2010 through and including August 31, 2010 (Dkt. No. 243; the "Application"), and in support thereof states the following:

1. On April 7, 2010, various creditors of the bankruptcy estate of Lydia Cladek, Inc. filed an Emergency Motion to Appoint a Chapter 11 Trustee (Dkt. No. 11; the "Motion").
2. On April 12, 2010, this Court entered an Order granting the Motion (Dkt. No. 31; the "Order"), and appointing Michael P. Phelan as Chapter 11 Trustee (the "Trustee") of the Debtor, Lydia Cladek, Inc.

3. The Order provides that the Trustee is to be compensated pursuant to 11 U.S.C. § 326.

4. On September 23, 2010, the Trustee filed the Application, seeking compensation of fees in the amount of \$51,060.00 and expenses in the amount of \$3,467.42, for a total amount of \$54,527.42, for the period from April 14, 2010 through August 31, 2010 (the "Application Period").

5. The Application seeks compensation for Trustee's fees and expenses incurred during the Application Period pursuant to 11 U.S.C. § 330. The Application seeks approval of amounts in excess of the maximum cap allowed under 11 U.S.C. § 326. The statutory fee limitation under 11 U.S.C. § 326 is computed based on the amount of disbursements. The Monthly Operating Reports filed in this case indicate disbursements were \$893,851.01 during the period of April 14, 2010 to August 31, 2010. The amount of compensation authorized under 11 U.S.C. § 326 is \$47,192.55 as computed below:

|  |                                       |
|--|---------------------------------------|
| Total amount of disbursements as of 8/31/10 = \$893,851.02 |                                       |
| 25% of first \$5,000 = \$1,250.00                          | \$893,851.02 - \$5,000 = \$888,851.02 |
| 10% of next \$45,000 = \$4,500.00                          | \$888,851 - \$45,000 = \$843,851.02   |
| 5% on next \$950,000 = \$42,192.55                         |                                       |
| Total fees: \$47,942.55                                    |                                       |

6. The Trustee's compensation should not exceed \$47,192.55.

7. On May 26, 2010, the Trustee filed its Application to Employ Michael Moecker & Associates ("MMA") as accountants to the Trustee, *nunc pro tunc* to April 14, 2010 (Dkt. No. 106; the "Retention Motion"). The Retention Motion spells out the services to be provided by

MMA, which includes, providing necessary accounting services and financial advice by assisting the Trustee in the analysis of the Debtor's books and records, assisting with the sale or disposition of property of the estate, assisting with the enforcement and collection of claims, forensic accounting, and preparation of financial reports and tax returns. The Retention Motion also states that they are to assist the Trustee in the performance of his duties. On June 15, 2010, the Court entered an Order Authorizing Application for Retention of MMA as accountants to the Trustee *nunc pro tunc* to April 14, 2010 (Dkt. No. 128; the "Retention Order").

8. On September 23, 2010, MMA, as accountants for the Trustee submitted an Amended Application which seeks interim compensation for services and reimbursement of expenses incurred during the period of April 13, 2010 through and including August 31, 2010 (Dkt. No. 244; the "MMA Application"). The time entries attached to the MMA Application contain approximately 425.50 hours, or a total of \$85,100.00 in fees, spent on overseeing operations and property supervision.<sup>1</sup> The description of services of "overseeing operations and property supervision" appears to be beyond the scope of the services for which MMA was employed and are services envisioned to be accomplished by the Chapter 11 Trustee and compensated within the constraints of 11 U.S.C. § 326.

9. The Trustee, who is affiliated with MMA is attempting to increase his trustee compensation by charging more than the amount allowed pursuant to 11 U.S.C. § 326 and also having MMA charge for services under the purview of an accountant that should have been

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<sup>1</sup> The time entries listed in the Application as "overseeing operations and property supervision" were often lumped in with other services without a separate time entry for the various tasks. The United States Trustee has utilized the total hours listed for the time entries which included "oversee operation" or "property supervision" if there was not a separate time entry for another task.

performed by the Trustee. The United States Trustee is filing an objection contemporaneously to the MMA Application.

WHEREFORE, the United States Trustee respectfully requests that this Court disallow the Chapter 11 Trustee, Michael P. Phelan's request to be paid any amounts requested in the Application that exceed the amount authorized pursuant to 11 U.S.C. § 326.

Dated: October 25, 2010

Donald F. Walton  
United States Trustee, Region 21

/s/ Elena L. Escamilla  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the forgoing Objection has been served on the following parties on 10/25/2010, electronically through CM/ECF, on parties having appeared electronically in the instant matter, and on the following parties by U.S. Mail if not receiving mail electronically through CM/ECF on 10/25/2010.

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/s/ Elena L. Escamilla  
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