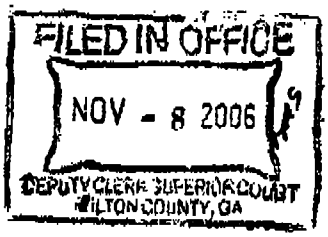
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



McKESSON INFORMATION SOLUTIONS, INC.,

Plaintiff,

vs.

DUANE MORRIS, LLP,

Defendant.

CIVIL ACTION

FILE NO. 2006CV121110

ORDER ON VERIFIED COMPLAINT FOR EMERGENCY INJUNCTIVE RELIEF AND DISQUALIFICATION OF DUANE MORRIS, LLP

The above-styled action came before the Court on the regularly scheduled Civil Non-Jury Calendar for October 31, 2006 on Plaintiff's Verified Complaint for Emergency Injunctive Relief and Disqualification of Duane Morris LLP, having been filed on August 11, 2006. Following oral argument, this case was taken under advisement for further review by the Court. Having reviewed and considered the arguments of counsel, pleadings and the record as a whole, the Court finds as follows:

FINDINGS OF FACT

The current matter involves an alleged conflict of interest in Defendant's representation of a party adverse to Plaintiff in an arbitration proceeding. Plaintiff McKesson Information Solutions, LLC ("MIS") is the respondent in an arbitration brought by two individuals named Nan Smith and Alex Smith (hereinafter "the arbitration"). The arbitration is being administered

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by the American Arbitration Association ("AAA"). The Defendant, Duane Morris, LLP, has substituted as lead counsel for Nan Smith and Alex Smith. Defendant is likewise representing two other McKesson subsidiaries, McKesson Automation, Inc. ("MAI") and McKesson Medication Management, Inc. ("MMM") in a separate action. By engagement letter dated April 27, 2006, Defendant Duane Morris, LLP undertook to represent MMM and MAI as local counsel in connection with the bankruptcy matter styled *In re Moshannon Valley Citizens, Inc. t/a Philipsburg Area Hospital*, pending in Bankruptcy Court for the middle District of Pennsylvania, Harrisburg Division (the "bankruptcy"). The April 27, 2006 engagement letter attempts to distinguish between McKesson Corporation's entities and contains a waiver of future conflicts. (See Duane Morris, LLP engagement letter dated April 27, 2006).

MIS, MAI and MMM all share the same parent corporation, McKesson Corporation ("McKesson"). As indicated in the Securities and Exchange Commission's ("SEC") Form 10-Q filing for McKesson Corporation, McKesson Corporation's subsidiaries fall into one of three business segments: Pharmaceutical Solutions, Medical-Surgical Solutions and Provider Technologies. (See Exhibit A of the Verified Complaint; McKesson Corporation Form 10-Q for the quarter ending June 30, 2006, pages 19-23). MIS and MAI are both part of the Provider Technologies segment within McKesson Corporation, which is known by the fictitious name McKesson Provider Technologies ("MPT"). MPT delivers enterprise-wide patient care, clinical, financial, supply chains, managed care and strategic management software solutions, automated pharmaceutical dispensing systems for hospitals, as well as outsourcing and other services to healthcare organizations throughout North America, the United Kingdom and other European countries. (See Exhibit A). MMM is technically under the Pharmaceutical Solutions segment of McKesson Corporation and provides mediation management products and services. MPT

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reports to the same principal executive officers who utilize the same principal executive office address (One Post Street, San Francisco, California) and the subsidiaries report their revenues as a single segment. (See Exhibit A, pages 19-23). Furthermore, Plaintiff has averred in the Complaint, and Defendant has not disputed same at oral argument, that MPT is headquartered in Alpharetta, Georgia and has a single reporting president, Ms. Pam Pure. Likewise, MPT reports to the same legal department in Alpharetta, Georgia, and the same lawyers direct the legal judgment and policy of the outside lawyers representing the various MPT business entities.

With specific regard to the impending arbitration, prior to 1994 Nan and Alex Smith owned a company called Care 2000, which was in the business of creating, developing, selling, licensing and leasing to health care providers copywritten software programs containing proprietary patient diagnosis and/or disease-specific medical care outcome measurement and case management tracking and reporting computer applications. In 1994, they sold Care 2000 to HBO & Company of Georgia, Inc. ("HBOC"), which was acquired by McKesson Corporation in 1999 and ultimately renamed McKesson Information Solutions, LLC ("MIS"). The acquisition agreement included a covenant not to compete, under which the Smiths were entitled to royalties should HBOC exploit the technology incorporated under Care 2000. Thereafter, Nan Smith became an employee of HBOC until her termination in 1996.

In 2005, the Smiths filed a demand for arbitration with the AAA alleging, among other various allegations, that MIS produced products that were derived from their technology under Care 2000 and that MIS has engaged in fraudulent and unethical behavior in its business practices. The arbitration is monitored in-house at MPT by attorney Ami Patel and paralegal Kristi Sherrell. Outside counsel is Morris, Manning & Martin, LLP. As previously indicated, the Smiths are represented by Defendant Duane Morris, LLP, who is likewise representing MAI

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and MMM, both part of the parent company McKesson Corporation, in the separate bankruptcy matter pending in Pennsylvania. Because MIS is part of the MPT business segment of McKesson Corporation, it is monitored by Ami Patel and Kristi Sherrell, the exact same staff monitoring the Smith arbitration. Outside counsel is Morris, Manning & Martin, LLP, again the same law firm handling the Smith Arbitration.

CONCLUSIONS OF LAW

I. Conflict of Interest

Plaintiff argues that Defendant Duane Morris, LLP should be disqualified from representing the Smiths in this action because of its concurrent representation of two other McKesson subsidiaries, McKesson Automation, Inc. ("MAI") and McKesson Medication Management, Inc. ("MMM") in a separate action. The Court is keenly aware that modern business practices in this age of parent companies with worldwide subsidiaries, mergers and acquisitions make this conflict of interest issue one of great importance, especially for lawyers engaged in the practice of representing such clients. In order to examine the alleged conflict of interest in this particular case it is necessary for the Court to first examine the underlying corporate relationships between the parties.

While Defendant Duane Morris, LLP attempts to explain away the apparent conflict of interest by urging that McKesson Corporation and its subsidiaries are separate and distinct entities for purposes of the conflict of interest analysis, the Court is not so persuaded. In Ramada Franchise Systems, Inc. v. Hotel of Gainsville Associates, et. al., 988 F.Supp. 1460 (N.D. Ga. 1997), the court stated that instead of focusing on labels or form over substance, the court should look at the facts and circumstances and relationship of the parties. Factors examined in Ramada

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were whether subsidiaries were "inextricably intertwined" with its parent company, whether the parent controlled the legal affairs of the subsidiary, whether the subsidiaries have similar management, share headquarters, share corporate principles and business philosophy, have the same legal department, and whether senior officers have the same titles in the different subsidiaries. See Ramada, 988 F.Supp. at 1464-65.

The underlying facts of the corporate relationships between the parties to this action are somewhat complicated. MAI, MIS and MMM are separate and distinct legal entities for contract and liability purposes. However, they are a single entity for purposes of conflict of interest analysis. MIS, MAI and MMM all share the same parent corporation, McKesson Corporation ("McKesson"). As indicated in the Securities and Exchange Commission's ("SEC") Form 10-Q filing for McKesson Corporation, McKesson Corporation's subsidiaries fall into one of three business segments: Pharmaceutical Solutions, Medical-Surgical Solutions and Provider Technologies. (See Exhibit A of the Verified Complaint; McKesson Corporation Form 10-Q for the quarter ending June 30, 2006, pages 19-23). MIS and MAI are both part of the Provider Technologies segment within McKesson Corporation, which is known by the fictitious name McKesson Provider Technologies ("MPT"). MPT delivers enterprise-wide patient care, clinical, financial, supply chains, managed care and strategic management software solutions, automated pharmaceutical dispensing systems for hospitals, as well as outsourcing and other services to healthcare organizations throughout North America, the United Kingdom and other European countries. (See Exhibit A). MMM is technically under the Pharmaceutical Solutions segment of McKesson Corporation and provides mediation management products and services.

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MPT reports to the same principal executive officers who utilize the same principal executive office address (One Post Street, San Francisco, California) and the subsidiaries report their revenues as a single segment. (See Exhibit A, pages 19-23). Furthermore, MPT is headquartered in Alpharetta, Georgia and has a single reporting president, Ms. Pam Pure. Likewise, MPT reports to the same legal department in Alpharetta, Georgia; particularly Ms. Ami Patel, Esq. and Ms. Kristi Sherrell, paralegal. Also, the same lawyers in the legal department in Alpharetta, Georgia direct the legal judgment and policy of the outside lawyers representing the various MPT business entities. Because MIS is part of the MPT business segment of McKesson Corporation, it is monitored by Ms. Ami Patel and Ms. Kristi Sherrell.

With specific regard to the impending arbitration, Plaintiff MIS is the respondent in the arbitration brought by the Smiths. The Smiths owned a company called Care 2000, which was in the business of creating, developing, selling, licensing and leasing to health care providers copywritten software programs containing proprietary patient diagnosis and/or disease-specific medical care outcome measurement and case management tracking and reporting computer applications. In 1994, they sold Care 2000 to HBO & Company of Georgia, Inc. ("HBOC"), which was acquired by McKesson Corporation in 1999 and ultimately renamed McKesson Information Solutions, LLC (now "MIS"). In 2005, the Smiths filed a demand for arbitration with the AAA alleging, among other various allegations, that MIS produced products that were derived from their technology under Care 2000 and that MIS has engaged in fraudulent and unethical behavior in its business practices.

The Defendant, Duane Morris, LLP, has substituted as lead counsel for Nan Smith and Alex Smith. Defendant is likewise representing MAI and MMM as local counsel in connection with the bankruptcy matter pending in Bankruptcy Court for the Middle District of Pennsylvania,

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Harrisburg Division. The arbitration is being administered by the American Arbitration Association ("AAA"). However, the arbitration is monitored in-house at MPT by attorney Ami Patel and paralegal Kristi Sherrell. Because MIS, again the respondent in the pending arbitration, is part of the MPT business segment of McKesson Corporation, it is monitored by Ms. Patel and Ms. Sherrell, the exact same staff monitoring the arbitration. Outside counsel for MIS in the pending arbitration is Morris, Manning & Martin, LLP.

In sum, the nexus is evident between the relevant parties in the arbitration, as well as in the impending bankruptcy. It is likewise apparent to the Court that Defendant Duane Morris, LLP is representing MMM and MPT through MAI in the bankruptcy matter and is simultaneously adverse to MPT through MIS in the impending arbitration. Based on the foregoing, the Court finds that there is a conflict of interest such as gives rise to the possible disqualification of Defendant Duane Morris, LLP in the current action.

II. Choice of Law

It is pertinent to indicate from the outset that Defendant Duane Morris LLP's apparent conflict representation of MMM and MPT through MAI in the Pennsylvania bankruptcy and its representation of the Smiths adverse to MPT through MIS here in Georgia are concurrent representations as both matters are currently in process. Furthermore, because the arbitration is being held in Georgia and the impending bankruptcy proceeding is in Pennsylvania, it is necessary for the Court to examine both the Pennsylvania Rules of Professional Conduct and the Georgia Rules of Professional Conduct in addressing the conflict of interest and disqualification issues.

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First, the Court notes that Professor Clark D. Cunningham, of the Georgia State College of Law, testified on behalf of Plaintiff at some length about the American Bar Association ("ABA") Formal Opinion 93-372, addressing waivers of future conflicts of interest. (See Transcript of hearing held October 31, 2006; pages 9-10). The Court acknowledges that the ABA ethics opinions are not authoritative in any given state as to what that individual state's rules of professional conduct require. They are merely persuasive in a state were there may be no formal advisory opinion system from which a controlling rule may be applied to a particular situation. The Court further notes that Formal Opinion 93-372 was withdrawn because the ABA model rule was changed by ABA Formal Opinion 05-436. Nevertheless, both Georgia and Pennsylvania have implemented Rules of Professional Conduct which pertain to the current situation.

Defendant has asserted that the engagement letter between it and MMM and MAI was negotiated and performed in Pennsylvania; and thus, Pennsylvania law applies. Likewise, Mr. Steven C. Krane, current chair of the American Bar Association Standing Committee on Ethics and Professional Responsibility, testified at great length on behalf of Defendant that Pennsylvania law applies to the current case and not that of the state of Georgia because the engagement letter references representation of the two Mckesson subsidiaries in the pending bankruptcy proceeding in Pennsylvania, that this is the only lawyer-client relationship that any McKesson entity has with Defendant Duane Morris, LLP and that the expectation of the parties who entered into the agreement was that Pennsylvania law would apply. (See Transcript of hearing held October 31, 2006; pages 25-26; See also Affidavit of Mr. Steven C. Krane, dated October 26, 2006; pages7-8).

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Interestingly, both Rules of Professional Conduct for Pennsylvania and Georgia are very similar as to the issue of waiver of future conflicts. As in the Georgia rules, Pennsylvania Rule 1.7 also indicates that a lawyer cannot represent a client if the representation involves a concurrent conflict of interest and that a lawyer may represent such a client only after each affected client gives ***informed*** consent. See Pennsylvania Rules of Professional Conduct, Rule 1.7(a) and (b). Nevertheless, the Court finds that because Defendant Duane Morris, LLP has undertaken to represent the Smiths against MIS in the arbitration pending in the state of Georgia and because Defendant Duane Morris, LLP consists of Georgia lawyers who are members of the Georgia Bar, the Georgia Rules of Professional Conduct govern their conduct in the current action. See Georgia Rules of Professional Conduct, Rule 8.5(a), (b)(1) and (2) (indicating that the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct); see also Pennsylvania Rules of Professional Conduct, Rule 8.5(b)(1) and (2) (indicating same as Georgia Rule).

III. Factors Relevant to the Conflict of Interest Analysis and Disqualification of Defendant Duane Morris, LLP

Having determined that the Georgia Rules of Professional Conduct are controlling in the present action, the Court now turns to an examination of Rule 1.7 and its application to the apparent conflict of interest and disqualification of Defendant from the present action. Georgia Rules of Professional Conduct, Conflict of Interest, Rule 1.7(a) reads, in pertinent part:

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> A lawyer shall not represent or continue to represent a client if there is a significant risk that the lawyer's own interests or the lawyer's duties to another client, a former client, or a third person will materially and adversely affect the representation of the client . . .

Defendant Duane Morris, LLP attempts to explain away the apparent conflict of interest by indicating that its concurrent representation of MAI and MMM and of the Smiths relate to entirely unrelated matters. However, pursuant to Comment 8 to Rule 1.7, the Court finds that a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. The Court acknowledges that the Georgia Rules of Professional Conduct, Conflict of Interest, Rule 1.7(b) indicates that a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected or former client consents in writing, to the representation. However, Rule 1.7(b) goes on to say that consent to such representation is acceptable only after having received in writing reasonable and adequate information about the material risks of the representation. Furthermore, client consent is not permissible if the representation involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

In the present action, Defendant Duane Morris, LLP relies upon the engagement letter, through which it attempts to distinguish between the McKesson Corporation's entities and contains a waiver of future conflicts. The April 27, 2006 engagement letter reads, in pertinent part:

> Given the scope of our business and the scope of our client representations through our various offices in the United States and abroad, it is possible that some of our present or future clients will have matters adverse to McKesson while we are representing McKesson. We understand that McKesson has no objection to our representation of parties with interests adverse to McKesson and waive any actual or potential conflict of interest as long as those other engagements are not substantially related to our services to

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McKesson.

> We agree, however, that McKesson's consent to, and waiver of, such representation shall not apply in any instance where, as a result of our representation of McKesson, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to McKesson's material disadvantage or potential material disadvantage. By agreeing to this waiver of any claim of conflicts as to matters unrelated to the subject matter of our services to McKesson, McKesson also agrees that we are not obligated to notify McKesson when we undertake such a matter that may be adverse to McKesson.

The Court finds that the above future waiver is inadequate and thus invalid as a matter of Georgia law because it is not a knowing waiver that identifies the specific adverse clients and details of adverse representation. In Worldspan, L.P., et.al. v. The Sabre Group Holdings, Inc., et. al., 5 F.Supp.2d 1356 (N.D. Ga. 1998), the court stated:

> [F]uture directly adverse litigation against one's present client is a matter of such an entirely different quality and exponentially greater magnitude, and so unusual given the position of trust existing between lawyer and client, that any document intended to grant standing consent for the lawyer to litigate against his own client must identify that possibility, if not in plain language, at least by irresistible inference including reference to specific parties, the circumstances under which such adverse representation would be undertaken, and all relevant like information.

In this case, Defendant's engagement letter does not refer to any particular parties or circumstances under which adverse representation would be undertaken. As such, the Court finds that MMM and MAI could not have reasonably anticipated that Defendant would actually consider representation of the Smiths in the concurrent action where the adverse party is attacking McKesson Corporation products and accusing it of fraudulent conduct. Courts must ensure that the trust and loyalty owed by lawyers to their clients are not compromised. See Snapping Shoals Electric Membership Corporation v. RLI Insurance Corporation, et. al., 2006WL 1877078 (N.D.Ga.). By Defendant Duane Morris, LLP's representation of the Smiths

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and its concurrent representation of MAI and MMM, both part of the parent company McKesson Corporation, in the separate bankruptcy matter pending in Pennsylvania, the Court finds that the possibility of breach of loyalty and of possible disclosure of information that may adversely affect MIS in the impending arbitration is too significant to be overlooked; especially where Defendant Duane Morris, LLP is involved in an arbitration attacking the very existence of MIS's line of software products and where the Smiths have accused MIS of fraudulent behavior. Given this, the Court finds that the language in Defendant Duane Morris, LLP's engagement letter with MMM and MAI cannot override its ethical obligations to its clients. As such, the balance of the factors weighs in favor of disqualification.

The Court further notes that Plaintiff's Verified Complaint for Emergency Injunctive Relief and Disqualification of Duane Morris LLP, illuminating the apparent conflict of interest in this case, was filed on August 11, 2006; which was relatively early in these proceedings. There appears to have been very limited document discovery in relation to the impending arbitration, the bulk of which, according to Plaintiff, has been stayed pending resolution of the conflict issue. Furthermore, there does not appear to be a final hearing currently scheduled for the arbitration. As such, the Court finds that there is no prejudice to the Smiths in disqualifying Duane Morris, LLP from representation at this time.

Therefore, Defendant Duane Morris, LLP is hereby **DISQUALIFIED and ENJOINED** from acting as counsel adverse to MIS in the impending arbitration. The Court is not inclined to award attorney's fees to either party in this matter.

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SO ORDERED this 7th day of November, 2006.

THELMA WYATT CUMMINGS MOORE, JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

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