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SEAN R. SMITH
DIRECT DIAL: 404.253.6955
E-MAIL: SRSmith@duanemorris.com

www.duanemorris.com

October 26, 2006

BY HAND DELIVERY

The Honorable Thelma Wyatt Cummings Moore
Justice Center Tower
185 Central Avenue SW
Atlanta, GA 30303

Re: McKesson Information Solutions LLC v. Duane Morris LLP
Civil Case No. 2006-CV-121110

Dear Judge Moore:

Enclosed please find a courtesy copy of the Affidavit of Steven C. Krane, which was filed with the court today in connection with the above-referenced matter.

Sincerely,

Sean R. Smith

SRS/ser
Enclosure
cc: Larry H. Kunin, Esq. (with enclosure by email)

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

McKESSON INFORMATION SOLUTIONS LLC, Plaintiff, v. DUANE MORRIS LLP, Defendant.	)	CIVIL ACTION FILE NO. 2006-CV-121110

NOTICE OF FILING ORIGINAL AFFIDAVIT

Defendant, Duane Morris LLP hereby gives notice of filing the original Affidavit of STEVEN C. KRANE in relation to Plaintiff's Motion for Injunction and Disqualification of Duane Morris LLP.

This 26th day of October, 2006.

DUANE MORRIS LLP

By: _____

John C. Herman
(Georgia Bar No.: 348370)
Sean R. Smith
(Georgia Bar No.: 663368)
Antony L. Sanacory
(Georgia Bar No.: 625195)

1180 West Peachtree Street
Suite 700
Atlanta, GA 30309-3448
Telephone: (404) 253-6900

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

McKESSON INFORMATION SOLUTIONS LLC, Plaintiff, v. DUANE MORRIS LLP, Defendant.	)	CIVIL ACTION FILE NO. 2006-CV-121110

CERTIFICATE OF SERVICE

This is to certify that I have this day served all parties in the foregoing matter with the foregoing Notice of Filing Original Affidavit by email and by depositing a copy of same in the United States Mail, with adequate postage thereon, properly addressed as follows:

Larry H. Kunin, Esq.
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326

This 26th day of October, 2006.

SEAN R. SMITH

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MCKESSON INFORMATION SOLUTIONS LLC,	)	
Plaintiff,	)	CIVIL ACTION FILE
v.	)	NO. 2006-CV-121110
DUANE MORRIS LLP,	)	
Defendant.	)	

AFFIDAVIT OF STEVEN C. KRANE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STEVEN C. KRANE, being duly sworn, deposes and says:

1. I am a partner in the Litigation and Dispute Resolution Department of Proskauer Rose LLP and serve as Chair of the firm's Law Firm Advisory Practice Group. I have been retained by the law firm of Duane Morris LLP ("Duane Morris" or the "Firm") to provide objective opinions concerning the conflict of interest allegations made against it by McKesson Information Systems LLC ("MIS") in the above-referenced litigation.

2. For the reasons that follow, it is my opinion that Duane Morris acted properly with respect to its representation of McKesson Medication Management LLC ("MML") and McKesson Automation, Inc. ("MAI") and that its disqualification from representing Nan and Alex Smith (the "Smiths") in their arbitration against MIS is not warranted.

Qualifications

3. I have been a practicing litigation attorney with the Proskauer firm since my graduation from the New York University School of Law in 1981, with the exception of one year of service (1984-85) as a law clerk to Judith S. Kaye, then an Associate Judge and now Chief Judge of the New York State Court of Appeals. For the past 16 years, I have served as Proskauer's Ethics Partner. I also chair the firm's Committee on Professional Standards, which is responsible for supervising the professional conduct of the more than 700 lawyers in the firm. My legal practice consists chiefly of serving as outside ethics counsel for numerous large and small law firms, as well as individual lawyers, throughout the United States, representing them in a variety of professional and legal matters. In those capacities, I am called upon several times a day to answer questions regarding a broad range of issues of legal ethics and professional responsibility.

4. Through several bar associations, I have played a role in the formulation of the legal ethics rules governing lawyers, as well as in the common law of professional responsibility, on a national basis. I am the current Chair of the American Bar Association ("ABA") Standing Committee on Ethics and Professional Responsibility, a committee on which I have served since 2004. I am also Chair of the New York State Bar Association ("NYSBA") Committee on Standards of Attorney Conduct ("COSAC"), which is responsible for spearheading the effort to adopt the Model Rules of Professional Conduct in New York. I have chaired COSAC and its predecessor since 1995. Prior to that, from 1990 to 1994, I was a member of the NYSBA Committee on Professional Ethics. In addition, I devoted nine of the eleven years between 1985 and 1996 to the Committee on Professional and Judicial Ethics of the Association of the Bar of the City of New York, serving as committee secretary, as a committee

member and ultimately as chair of that committee. In those capacities, I have participated in the publication of scores of ethics opinions.

5. I have also served in a judicial capacity in the lawyer disciplinary system in New York State, including variously as a Special Referee, Hearing Panel Member and Hearing Panel Chair in the First and Second Judicial Departments. I have also served as a Hearing Panel Chair for the Committee on Grievances for the United States District Court for the Southern District of New York. I taught legal ethics at the Columbia University School of Law from 1989 through 1992, and have lectured and published many articles on issues of professional responsibility. A copy of my curriculum vitae is attached to this affidavit.

6. In my capacity as Ethics Partner for the Proskauer firm, I regularly meet with and interact with my counterparts at large law firms throughout the country to discuss issues and matters of common interest, including limitations on the scope of engagements, general advance conflict waivers and engagements as local counsel. As a result, I am familiar with the general practices and procedures of large law firms with respect to such matters.

7. The opinions expressed in this affidavit are my own.

Summary of Relevant Facts

8. I have reviewed (a) the Verified Complaint for Emergency Injunctive Relief and Disqualification of Duane Morris, LLP, and the exhibits thereto, filed on August 11, 2006; (b) the Emergency Motion for Injunction and Disqualification of Duane Morris LLP, filed on August 11, 2006; and (c) the Memorandum in Opposition to the Emergency Motion for Injunction and Disqualification, and the exhibits thereto, filed August 21, 2006.

9. Based on those submissions, I understand that the Firm was retained on or about April 27, 2006 to serve as local counsel to MML and MAI in a bankruptcy matter pending in Harrisburg, Pennsylvania. The Harrisburg office of Duane Morris promptly sent an engagement letter to the law firm of Morris, Manning & Martin, LLP ("Morris Manning"), which was serving as lead outside counsel to MML and MAI in the proceeding. The letter set forth the terms and conditions under which the Firm was willing to accept the engagement.

10. The engagement letter made clear that Duane Morris was agreeing to act as counsel only to MML and MAI, and not any other McKesson entity. The letter further made clear that Duane Morris was agreeing to represent MML and MAI only as local counsel in the Pennsylvania bankruptcy proceeding and not in any other matters. Duane Morris also included a general advance conflict waiver provision, pursuant to which it reserved the right to undertake any and all matters adverse to MML and MAI in the future except to the extent such matters were substantially related to the limited work to be done for them in the Pennsylvania bankruptcy proceeding.

11. The engagement letter was reviewed by Morris Manning on behalf of MML and MAI, and on May 11, 2006 it requested certain changes. However, none of the changes requested by Morris Manning on behalf of its clients related to the limitation as to the entities being represented by Duane Morris, to the scope of the representation of the two entities that were being represented, or to the general advance conflict waiver. Those provisions were presumably acceptable to Morris Manning and its clients.

12. A final engagement letter incorporating the changes requested by Morris Manning on behalf of its clients was sent by Duane Morris on May 19, 2006.

13. Two months later, on July 19, 2006, the Atlanta, Georgia office of Duane Morris appeared on behalf of the Smiths, claimants in an arbitration against MIS. The claims in the arbitration relate to the performance of certain non-competition agreements between MIS and the Smiths that have no relationship whatsoever to the matters in dispute in the Pennsylvania bankruptcy proceeding.

14. On July 25, 2006, a Morris Manning lawyer expressed the view that, notwithstanding the express terms of the engagement letter that his own firm had reviewed and approved on behalf of its clients, Duane Morris was barred from accepting the engagement to represent the Smiths in the Georgia arbitration. In view of the apparent decision by MML and MAI to revoke their advance conflict waiver, Duane Morris offered to withdraw from representing MML and MAI in the Pennsylvania bankruptcy proceeding and relieve them of their obligations to abide by the negotiated engagement letter. MML and MAI refused, accusing Duane Morris of "extortion," and this action followed.

15. The work done to date by Duane Morris in the Pennsylvania bankruptcy proceeding has been limited to the ministerial matters traditionally undertaken by local counsel in litigated proceedings, including review, service and filing of papers and discussions of local judges and procedural rules. The Duane Morris lawyers have had limited contact with any employee of any McKesson-owned entity and have received little confidential information relating to any such entity. I am advised that Duane Morris lawyers recorded only approximately 15 hours of time between the commencement of the engagement in April 2006 and the filing of this lawsuit in August 2006.

Discussion and Analysis

Engagement Letters

16. It is common (and in some jurisdictions required) for a law firm to confirm in writing, at the outset of an engagement, the terms and conditions pursuant to which the firm agrees to undertake the new representation. Sometimes these writings take the form of retainer agreements, which are intended to be signed by the firm and countersigned by the client to evidence its agreement. Often, however, firms send clients what are called "engagement letters," which memorialize the same kinds of understandings without the need for client countersignature. If the client is dissatisfied with any of the terms set forth in the engagement letter, it is free to negotiate those terms with the law firm. If the client and law firm cannot reach a mutually satisfactory resolution, the client's recourse is to locate other counsel willing to represent it in the matter on more acceptable terms. The client cannot, however, require a law firm to undertake an engagement on terms that are unacceptable to it.

17. The letter sent by Duane Morris to MAI and MML in April 2006 was an engagement letter. It contained a broad range of terms, and was intended to inform the client of the conditions under which Duane Morris would accept the engagement. Engagements of this kind can potentially result in a broad range of conflicts of interest and other complications unless the parameters of the representation are carefully circumscribed. It is therefore typical for law firms, particularly large firms such as Duane Morris (and many others, including my own), to exercise caution in accepting engagements in relatively small matters for large corporations, such as service as local counsel.

18. Duane Morris set forth the terms of its representation in two respects relevant to this action. First, it made clear that its engagement was limited with respect to the identity of the parties being represented. The Firm stated that "unless we reach an explicit understanding to the contrary, we are being engaged by and will represent [MML and MAI], and not any parent, subsidiary or affiliated entities of [MML and MAI] . . . ." Second, Duane Morris included a general advance conflict waiver, to confirm that it would accept the engagement in the Pennsylvania bankruptcy proceeding only if it were free to represent other current or future clients in unrelated matters adverse to McKesson.

19. That MML and MAI agreed to these two provisions cannot be doubted. On behalf of its clients, Morris Manning reviewed the engagement letter and negotiated certain of its terms. Morris Manning raised no concerns with respect to the two provisions discussed above. It received a final version of the engagement letter that incorporated its requested changes, and it used the services of Duane Morris as local counsel in the Pennsylvania bankruptcy proceeding pursuant to that engagement letter without further comment.

20. I am advised that McKesson claims to have a policy against agreeing to advance conflict waivers. Assuming this is the case, the agreement of MML and MAI to the terms of the Duane Morris engagement letter, which included such a waiver, must have been all the more knowing. Morris Manning must have been aware of such a policy, as general outside counsel to the McKesson organization, and presumably would have focused upon Duane Morris's waiver provision, if not discussed it expressly with the client.

21. Both of the agreed-upon provisions are ethically proper under generally recognized principles of legal ethics. In that regard, I understand that MIS, as plaintiff in this

proceeding, has relied upon Georgia law in support of its arguments. The representation governed by the engagement letter, however, is based exclusively in Pennsylvania and relates to a litigation pending within Pennsylvania. Moreover, it is the Harrisburg, Pennsylvania office of Duane Morris that is performing legal services for MML and MAI. Indeed, the only state in which any legal services are being performed by any office of Duane Morris for any McKesson entity is Pennsylvania, and the only lawyer-client relationship at issue in this action is the one between MML and MAI, on the one hand, as parties in the Pennsylvania bankruptcy proceeding, and the Harrisburg, Pennsylvania office of Duane Morris, on the other hand. The only connection between the issues raised in this matter and the State of Georgia is that Duane Morris represents the Smiths here.

22. Accordingly, I therefore respectfully submit that Pennsylvania law, not Georgia law, governs the conduct of the Duane Morris firm, and thus this dispute. See Pennsylvania Rules of Professional Conduct, Rule 8.5(b); Georgia Rules of Professional Conduct, Rule 8.5(b). As discussed below, however, the application of Georgia law would not require a different conclusion.

Corporate Family Representations

23. Lawyers and law firms representing corporate entities have long grappled with the question whether representation of one part of a large corporate family constitutes representation of any other part of that family, or indeed of the entire family. A lawyer who represents one subsidiary of a large conglomerate does not ordinarily wish to be deemed to be representing every other subsidiary or affiliate of that conglomerate or the parent itself,

particularly to the extent that such a broadly defined representation would establish a myriad of potential conflicts of interest precluding other representations.

24. The most commonly recognized approach to this issue is to have the lawyer and client agree in advance as to the scope of the representation, that is, to identify up front which of the many members of the corporate family the lawyer has undertaken to represent. The ABA Standing Committee on Ethics and Professional Responsibility, in its Formal Opinion 95-390 (Jan. 25, 1995), expressly adopted this approach, stating that the "best solution to the problems that may arise by reason of clients' corporate affiliations is to have a clear understanding between lawyer and client, at the very start of the representation, as to which entity or entities in the corporate family are to be the lawyer's clients, or are to be so treated for conflicts purposes." Duane Morris followed this unambiguous advice in its engagement letter with MML and MAI, identifying those two McKesson entities as the only two being represented. Thus, Duane Morris defined and circumscribed the universe of corporate entities that it was undertaking to represent, and MML and MAI, through their counsel, agreed to that limitation.

25. MIS's strained construction of the language of the engagement letter, apparently designed to evade its impact, makes no sense. It has suggested that the language was intended to mean that MML and MAI were the only two entities to which Duane Morris would look for payment of fees, but that otherwise the Firm's duties would run to every entity in the McKesson corporate family. (Verified Complaint ¶ 34.) It is inconceivable, however, that a law firm would make such an agreement, thereby undertaking ethical and legal duties to dozens of constituent parts of a large corporate enterprise while agreeing to look only to two isolated subsidiaries for payment. If anything, a firm would want to broaden, not narrow, the list of

corporate entities responsible for payment of fees to enhance their collectability. Moreover, the very language of the engagement letter refutes that construction.

General Advance Conflict Waiver

26. Law firms often require, as a condition of accepting an engagement, that a prospective client agree that the firm may accept or continue representations adverse to it notwithstanding any conflicts of interest that such a representation might create. This is particularly the case with respect to relatively minor engagements. Firms are generally not willing to take the risk of being precluded from accepting new matters because of a relatively small engagement on behalf of a client. Many firms, including my own, would not accept such an engagement without a general advance conflict waiver.

27. Thus, general advance conflict waivers are beneficial both to the current client, who may wish to engage a particular firm to represent it in a matter, and to other current and future clients, who will not be deprived of counsel of their choice because of a technical conflict of interest. Particularly when negotiated between law firms and sophisticated clients represented by independent counsel, such waivers help balance the legitimate expectations and interests of all potentially affected clients without compromising the duties owed by the law firm to any of them.

28. The ABA Model Rules of Professional Conduct recognize that advance conflict waivers are appropriate in circumstances such as those presented here. Comment [22] to Model Rule 1.7 states, in pertinent part (emphasis supplied):

> Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of [Rule 1.7(b)].

> The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

See also ABA Standing Committee on Ethics and Professional Responsibility, Formal Opinion 05-436 (withdrawing Formal Opinion 93-372 regarding advance waivers of conflicts of interest); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 122, cmt. d (2000) (a prospective waiver is effective where the client in question is sophisticated and has had the opportunity to receive independent legal advice regarding the waiver).

29. I note that Comment [22] has been adopted in Pennsylvania. Accordingly, when the Harrisburg, Pennsylvania office of Duane Morris undertook to represent MML and MAI in the Pennsylvania bankruptcy proceeding, it complied fully with applicable law. The client was a sophisticated user of legal services and was represented by counsel – ironically the very counsel who now attacks the waiver in this proceeding – in connection with the negotiation of the terms and conditions of the engagement, including the general advance conflict waiver as to which it raised no questions prior to the commencement of the Georgia arbitration.

30. While Comment [22] has not been adopted in Georgia, that fact cannot be interpreted as a rejection of its substance. The text of the comment was added to the Model Rules of Professional Conduct by the ABA House of Delegates as part of the "Ethics 2000" overhaul of the rules in February 2002. See American Bar Association, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT, 1982-2005, at 160-61 (2006). According to the ABA, which continuously monitors the status of implementation of the Ethics 2000 amendments on a national basis, all of the amendments adopted by the ABA in 2002 are still under active consideration by the Georgia Bar.[1]

31. Likewise, the principal authority cited by MIS for the proposition that the State of Georgia has rejected advance waivers, District Judge Moye's opinion in Worldspan, L.P. v. Sabre Group Holdings, Inc., 5 F. Supp. 2d 1356 (N.D. Ga. 1998), is distinguishable on its facts and contrary to the weight of authority. Significantly, in Worldspan, unlike here, there was evidence in the record that the client had objected immediately to the inclusion of a general advance conflict waiver in its engagement letter. The decision also predates Georgia's adoption of the Model Rules of Professional Conduct in 2001, which worked substantial changes in the substantive law of conflicts of interest as compared with the Code of Professional Responsibility, as well as the ABA House of Delegates' adoption of Comment [22] to Model Rule 1.7, discussed above.

32. The argument advanced by MIS as to its purported interpretation of the advance waiver language is as strained and illogical as is its construction of the language limiting the scope of the representation to MML and MAI. According to MIS, the waiver language

[1] See http://www.abanet.org/cpr/jclr/ethics_2000_status_chart.pdf (updated as of October 20, 2006).

meant only that Duane Morris would be permitted to represent clients who had matters adverse to McKesson in which they were being represented by other counsel. MIS did not, it claims, understand the provision to allow Duane Morris itself to represent those clients. Were that the intent of the provision, however, it would be meaningless. No conflict of interest is created by representing two clients who happen to be adverse to one another in unrelated proceedings in which each is being represented by other counsel. In MIS's view, it would have been a conflict of interest requiring a waiver for the Atlanta office of Duane Morris to prepare wills for the Smiths while the firm's Harrisburg office represented MML and MAI in the Pennsylvania bankruptcy proceeding, solely because a dispute was pending between the Smiths and another McKesson entity in which Duane Morris played no part. No waiver would have been necessary for that representation, which does not implicate any conflict of interest rule, and thus the waiver language in the engagement letter cannot be construed in the manner suggested by MIS.

33. The sole exception to the waiver set forth in the engagement letter restricted the adverse use of MML or MAI confidential information. Duane Morris therefore agreed that it would not undertake adverse representations in substantially related matters, which would give rise to a risk that confidential information could be misused. Not even MML and MAI seriously contend that there is any substantial legal or factual relationship between the Pennsylvania bankruptcy proceeding and the Georgia arbitration. Instead, they argue only that "[i]t is possible in its representation of [MML and MAI] in the Bankruptcy Matter that Duane Morris has learned general information about McKesson's product and marketing policies that could be of a benefit to the Smiths in the Arbitration." (Verified Complaint ¶ 46.)

34. In the absence of a substantial relationship between the matters, it is insufficient to state conclusorily, as do MML and MAI, that it is "possible" that confidential

information was learned and that such information might be useful in the adverse representation. Indeed, the Worldspan case itself recognizes that the mere raising of such a possibility is insufficient. "[W]here the issue is the hostile use of confidential information, this Court has placed the burden of proof on the party seeking disqualification." Worldspan, 5 F. Supp. 2d at 1358.

35. Lastly, I note that MIS relies on a telephone consultation with a representative of the "Georgia bar ethics hotline," who purportedly delivered an oral opinion that "the facts alleged herein result in a conflict of interest on the part of Duane Morris." (Verified Complaint ¶ 43.) I cannot evaluate or comment upon the advice claimed to have been given by the Georgia Bar staff attorney without knowing precisely what information was imparted to her and the context in which it was presented. To the extent that any such advice was obtained under false pretenses, as it may have been, it is unworthy of consideration.

36. I have served on bar association ethics committees for many years and have answered literally hundreds of "ethics hotline" calls myself. I am aware that the advice given over ethics hotlines is generally intended to be informal and nonbinding, as well as dependent upon the accuracy and completeness of the facts as represented by the caller. Hotlines exist to provide guidance regarding the inquiring lawyer's own proposed future conduct. To avoid becoming involved in litigated proceedings, among other reasons, hotlines generally have rules that bar them from giving advice to non-lawyers, about past conduct or about the conduct of lawyers other than the caller.

37. The Georgia Bar, like other bar associations including those on which I served, has such a rule. Its web site states that the hotline staff will refuse to answer questions

regarding "the propriety of past conduct or the actions of a lawyer other than the caller."[2] This strongly suggests that the caller whose conversation is reflected in MIS's Verified Complaint made inaccurate statements to the Georgia Bar regarding his identity and intentions, and perhaps also the facts, thereby rendering the purported advice inherently suspect regardless of whether its substance is accurately reported by MIS.

Duane Morris's Offer to Withdraw

38. To the extent that MML and MAI are no longer willing to abide by their agreement to restrict the scope of Duane Morris's engagement or to waive conflicts of interest that may arise in the future, they cannot require Duane Morris to withdraw from representing the Smiths in the Georgia arbitration, a representation undertaken in reliance on the agreements reflected in the engagement letter. When a client exercises its right to rescind a conflict waiver that it has given to its lawyer, it has materially altered the terms and conditions of the engagement. Its recourse is to find new counsel to represent it in the matter, not to deprive an innocent client of its choice of counsel and require it to find new lawyers to represent it. See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS, § 122, cmt. f (2000). I note that this approach is typical in cases in which a conflict of interest arises because of a client's conduct, not because of anything done by the lawyer or by the other affected client.[3]

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[2] See www.gabar.org/ethics/ethics_hotline_faqs/.

[3] See, e.g., AmSouth Bank, N.A. v. Drummond Co., 589 So. 2d 715, 721-22 (Ala. 1991) (where the law firm did not play a role originally in creating the conflict, the court followed a "common sense" approach and found that the law firm may avoid disqualification by "moving swiftly to withdraw from its representation" to minimize prejudice to each client concerned); Gould, Inc. v. Mitsui Mining & Smelting Co., 738 F. Supp. 1121, 1126-27 (N.D. Ohio 1990) (applying balanced approach in ruling against disqualification in situation where the conflict of interest was created by an acquisition of the client, and not by the law firm).

39. Thus, Duane Morris acted properly when it suggested to MML and MAI that withdrawal from the Pennsylvania bankruptcy proceeding would be the proper response to their revocation of the basic terms of the engagement.

Conclusion

40. For the foregoing reasons, it is my opinion that Duane Morris acted properly with respect to its representation of MML and MAI and that its disqualification from representing the Smiths in the Georgia arbitration is not warranted.

41. Specifically, the Firm properly dealt with the prospect of representing two subsidiaries of a large corporate organization by defining and limiting the scope of the representation in an engagement letter. Likewise, in accordance with widely accepted principles of legal ethics, Duane Morris further addressed its desire that service as local counsel for these McKesson entities would not preclude it from accepting subsequent engagements adverse to those or other McKesson entities by including a general adverse conflict waiver in its engagement letter. These provisions were reviewed and approved by Morris Manning as counsel to MML and MAI, the very same counsel now challenging the provisions in this action.

42. The exception in the engagement letter for substantially related adverse representations is inapplicable here, because there is no relationship between the Pennsylvania bankruptcy proceeding and the Georgia arbitration, nor is there any risk that whatever confidential information the Harrisburg office of Duane Morris may have received from MML and MAI in the Pennsylvania bankruptcy proceeding may be used by the Atlanta office of Duane Morris in the Georgia arbitration to the detriment of MIS.

43. Finally, Duane Morris acted properly when it offered to withdraw from the Pennsylvania bankruptcy matter when MML and MAI expressed their intention to revoke their agreement to the general advance conflict waiver.

STEVEN C. KRANE

Sworn to before me this

25th day of October, 2006

Notary Public

REGINA M. CASTELA
Notary Public, State of New York
No. 01CA4782890
Qualified in Nassau County
Commission Expires Dec. 31, 2009

STEVEN C. KRANE

1585 BROADWAY, 17TH FLOOR
NEW YORK, NEW YORK 10036-8299
TELEPHONE: (212) 969-3435
FAX: (212) 969-2900
E-MAIL: skrane@proskauer.com

PROFESSIONAL EXPERIENCE

PROSKAUER ROSE LLP
NEW YORK, NEW YORK

Partner (1989-date); associate (1981-84, 1985-89). Litigation and Dispute Resolution Department; Chair, Law Firm Advisory Practice Group. Nationwide litigation and counseling practice concentrated in the fields of attorney professional responsibility, alternative dispute resolution and general commercial litigation. Ethics Partner for the 700-lawyer firm, and Chair of the firm's Committee on Professional Standards. Served as firm-wide Pro Bono Chairman from 2004 to 2006.

NEW YORK STATE COURT OF APPEALS
ALBANY, NEW YORK

Law Clerk to Associate Judge Judith S. Kaye (1984-85).

ACADEMIC POSITIONS

COLUMBIA UNIVERSITY SCHOOL OF LAW:

Adjunct Faculty, Lecturer in Professional Responsibility (1989-92).

GEORGIA INSTITUTE OF TECHNOLOGY:

Adjunct Professor, Masters Degree program in International Sports Management, course in "Legal and Regulatory Issues in U.S. Sports Business" (1994-96).

PROFESSIONAL ACTIVITIES

NEW YORK STATE BAR ASSOCIATION:

President (2001-02).
President-Elect (2000-01).
Immediate Past President (2002-03).
Executive Committee (1998-2003).
Finance Committee (Member, 2000-03).
Nominating Committee (Chair, 2004; Member at Large, 2003; Alternate Member at Large, 2005-06).
House of Delegates (Chair, 2000-01; Member, 1996-2002; Life Member, 2002-date).
Committee on Standards of Attorney Conduct (Chair, 1999-date).
Special Committee on Cross-Border Legal Practice (Chair, 2004-date).
Special Committee on Multi-Disciplinary Practice (Chair, 2003-05).
Special Association House Committee (Chair, 2000-01).
Committee on Resolutions (Chair, 2001-02).
Special Committee to Review the Code of Professional Responsibility (Chair, 1995-99; Member, 1992-95).
Special Committee on Student Loan Assistance for the Public Interest (Chair, 2005-date).
Special Committee to Review Attorney Fee Regulation (Co-Chair, 2003-05).
President's Committee on Access to Justice (Co-Chair, 2000-01).
Special Committee on the Law Governing Firm Structure and Operation ("MacCrate Committee") (Vice-Chair, 1999-2003).
Special Committee on the Future of the Profession (Vice-Chair, 1997-2000).
Special Committee on Legal Issues Affecting Same-Sex Couples (Member, 2003-date).
Special Committee on Law Practice Continuity (Member, 2002-06).
Special Committee to Commemorate the 125th Anniversary of the Association (Member, 2001-04).
Special Executive Director Search Committee (Member, 2000-01).
Subcommittee on Association Publications (Member, 2002-date).
Committee on Judicial Selection (Appellate Panel Member, 2000-02).
Special Committee on Multi-Disciplinary Practice and the Legal Profession (Member, 1998-99).
Membership Committee (Member, 1998-2003).
Electronic Communications Task Force (Member, 1999-2002).
Committee on Mass Disaster Response (Member, 1997-2003).
Delegate to Advisory Council to the Commission on Evaluation of the Rules of Professional Conduct (Ethics 2000) (1998-2002).
Committee on Professional Ethics (Member, 1990-94).
Task Force on Simplification (Member, 1988-92).
Committee on Courts of Appellate Jurisdiction (Member, 1984-88).

NYSBA INTERNATIONAL LAW AND PRACTICE SECTION
Vice-Chair/Liaison with Other International Bar Associations (2004-date).
Executive Committee (Member, 2003-date).

AMERICAN BAR ASSOCIATION

House of Delegates (Member, 2001-date).
Standing Committee on Ethics and Professional Responsibility (Chair, 2006-date; Member, 2004-06).
Gramm-Leach-Bliley Task Force (Member, 2002-date).
Task Force on the Attorney-Client Privilege (Liaison, 2005-date).
Task Force on GATS Legal Services Negotiations (Advisor, 2006-date).
Joint Committee on Lawyer Regulation, Ad Hoc Working Group on Foreign Legal Consultants (Member, 2005-06).

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK:

Committee on Professional and Judicial Ethics (Chair, 1993-96; Member, 1990-93; Secretary, 1985-88).
Delegation to the NYSBA House of Delegates (Chair, 1997-98; Member, 1996-97).
Committee on International Security Affairs (Member, 2001-03).
Committee on Federal Courts (Member, 1996-99).
Ad Hoc Committee on Mass Disaster Planning (Member, 1996-98).
Special Committee on Government Ethics (Member, 1988-90).
Ad Hoc Committee on Private Legal Referral Services (Member, 1987-89).
Committee on Professional Responsibility (Member, 1985-88).

THE FEDERALIST SOCIETY, LAWYERS DIVISION

Professional Responsibility Practice Group, Executive Committee (Member, 1999-2002; Senior Advisor, 2003-date).
Committee on Conflicts of Interest (Chair, 1999-2002).
New York Chapter Steering Committee (Member, 1994-date).

DISCIPLINARY AND OTHER JUDICIAL COMMITTEES:

Grievance Committee for the Ninth Judicial District (Special Referee, 2006-date).
Departmental Disciplinary Committee of the Appellate Division, First Department (Hearing Panel Chair, 1998-99; Hearing Panel Member, 1996-97; Special Trial Counsel, 1991-93; Special Referee, 1998, 2004).
United States District Court, Southern District of New York (Chair, Grievance Panel, 1995-2001).
New York State Judicial Institute on Professionalism in the Law (Member, 2005-date).

Administrative Board of the Courts of the State of New York, Attorney Advertising Committee (Member, 2005-date).

New York State Office of Court Administration Task Force on Attorney Professionalism and Conduct (Member, 1996-98).

Historical Society of the Courts of the State of New York (Charter Member, Board of Trustees, 2002-04).

OTHER ACTIVITIES:

American Bar Foundation (New York State Fellows Co-Chair, 2003-date; Fellow, 2000-date).

New York Bar Foundation (Member, Board of Directors, 2004-date).

New York Bar Foundation (Fellow, 1998-date).

CPR Institute for Dispute Resolution (Member, New York City and Sports Law Panels).

Member, Mediation Panel, United States District Court, Southern District of New York (2002-date).

Member, American Law Institute (1993-date).

Lectured on topics in legal ethics and sports law in programs sponsored by:

Fordham University School of Law
Benjamin N. Cardozo School of Law (Yeshiva University)
Villanova University School of Law
New York State Bar Association
Association of the Bar of the City of New York
American Bar Association
Federal Bar Council
National Conference on Professional Responsibility
Association of Professional Responsibility Lawyers
Bar Association of Nassau County (Nassau Academy of Law)
Bar Association of Erie County
Brooklyn Bar Association
Ulster County Bar Association
Women's Bar Association of the State of New York (Capital District Chapter)
Women's Bar Association of the State of New York (New York City Chapter)
New York Intellectual Property Law Association
Mid-Atlantic Bar Conference
Louisiana State Bar Association
Mississippi State Bar Association
Appellate Division, First Judicial Department (with the Assigned Counsel Plan of the City of New York)
Department of Law of the City of New York
Practicing Law Institute
American Conference Institute
Prentice-Hall Law & Business

Lorman Education Services

Chair, Practicing Law Institute Continuing Legal Education program, "Staying out of Trouble" (2002-04).

Testified before Congressional Task Force on Assistance to Families of Aviation Disasters concerning the regulation of attorneys.

Quoted in a broad range of publications, including the *New York Times, Wall Street Journal, American Lawyer, National Law Journal, Crain's New York Business, New York Law Journal, New York Lawyer, ABA Journal, New York Post, New York Daily News, New York Newsday, Brooklyn Daily Eagle, Buffalo News, Rochester Democrat and Chronicle, Lawyers' Weekly USA, New York Observer, New York State Bar Journal, Bar Leader, The Metropolitan Corporate Counsel, ABA/BNA Lawyers' Manual on Professional Conduct Current Reports; BNA Government Employee Relations Report; Associated Press, International Herald Tribune, Alleycat News, The American Banker, The Federal Lawyer, New Jersey Law Journal, Albany Times Union, Capital District Business Review (Albany), Westchester County Business Journal, Long Island Business News, Chicago Daily Law Bulletin, Bloomberg.com, Boston Herald, Boston Business Journal, California Lawyer, Connecticut Law Tribune, Fulton County Daily Report (Atlanta), Washington Legal Times, Palm Beach Post, Mobile (Ala.) Register, Financial Times (London), El Periodico de Catalunya (Barcelona)* and *La Vanguardia (Barcelona).*

Interviewed on television and radio networks and stations, including CNN-FN, Fox Cable News, CNBC-TV, National Public Radio, WCBS Radio, WBBR Radio and WWRL Radio.

Listed in *Who's Who in the World, Who's Who in America, Who's Who in American Law* and *Who's Who in the East; Best Lawyers in America, Super Lawyers.*

PROFESSIONAL AWARDS AND HONORS:

Legal Aid Society Pro Bono Award (2006).

George W. Hewlett High School Alumni Hall of Fame (inducted 2004).

George W. Hewlett High School Distinguished Alumni Award (2004).

Association of the Bar of the City of New York Thurgood Marshall Award for Death Row Inmate Representation (1998).

Legal Aid Society Volunteer Counsel Award (1985).

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW
NEW YORK, NEW YORK

J.D. 1981.
Securities Institute Fellow, 1980-81.
Articles Editor, Journal of International Law and Politics, 1980-81.
Award for Outstanding Journal Editor, 1981.
Gussie Chinsky Memorial Prize for Outstanding Student Note, 1981.

STONY BROOK UNIVERSITY
STONY BROOK, NEW YORK

B.A. (Cum Laude) 1978.
Major Field: Political Science.
Honors: Phi Beta Kappa
Pi Sigma Alpha (Political Science Honor Society).

BAR ADMISSIONS

State of New York (1982).
Supreme Court of the United States (1987).
United States Court of Appeals, First Circuit (2001).
United States Court of Appeals, Second Circuit (1987).
United States Court of Appeals, Third Circuit (2000).
United States Court of Appeals, Sixth Circuit (1997).
United States Court of Appeals, District of Columbia Circuit (2004).
United States District Court, Southern and Eastern Districts of New York (1982).
Admitted *pro hac vice* in federal and state courts in California, Connecticut, Delaware, District of Columbia, Florida, Illinois, Massachusetts, Minnesota, Montana, New Jersey, Oregon, Pennsylvania and Texas.

PUBLICATIONS

Judith S. Kaye, to be published in "Biographies of the Judges of the New York Court of Appeals" (Fordham University Press 2006).
Disaggregating the Aggregate Settlement Rule, New York Professional Responsibility Report (May 2005).

Don't Tell Anyone (Our Confidentiality Rules are Changing), New York State Bar Journal (May 2005).

Avoiding Accessorial Liability in Lateral Partner Recruiting, New York Professional Responsibility Report (April 2005), at 1.

Don't Tell Anyone (Our Confidentiality Rules Are Changing), NYSBA Government, Law and Policy Journal 40 (Spring 2004).

After the 1999 Code Amendments: The Future of Ethics, Engage: The Journal of the Federalist Society's Practice Groups 129 (October 2003).

You Can't Stop a Client from Complaining, New York Professional Responsibility Report (September 2003), at 1.

It's Not Our Job, Engage: The Journal of the Federalist Society's Practice Groups 129 (May 2003).

What Courts Have Not Told You About American Indian Gambling, New York Law Journal, June 20, 2002, at 4.

President's Message: Con te Partiró, New York State Bar Journal (May 2002).

Billing for Computer Assisted Legal Research, New York Professional Responsibility Report (May 2002).

Proposal Could Tailor Litigation, New York Law Journal, May 1, 2002, at S2.

President's Message: Gunderson, Esq., New York State Bar Journal (March/April 2002).

Stop Bashing Judges, Letter to the Editor, New York Daily News, March 17, 2002.

Editorial: Campaign Reform Measure Long Overdue, Buffalo News, February 24, 2002.

President's Message: Now We Are 125, New York State Bar Journal (February 2002).

President's Message: Not Just Another Pro Bono Message, New York State Bar Journal (January 2002).

R.I.P. MDP: Let Lawyers Practice Law, National Law Journal, Jan. 28, 2002, page A16.

Back to the Future: Issues Facing Profession Over Next 10 Years, New York Law Journal, Jan. 22, 2002, page SB2.

Appointed Guardians, Letter to the Editor, New York Times, Dec. 19, 2001 page A34.

President's Message: Mid-Term Letter, New York State Bar Journal (November/December 2001).

Improving the System, Letter to the Editor, New York Daily News, Nov. 30, 2001.

Point/Counterpoint: Client Confidences, New York Lawyer (October 2001).

President's Message: We Shall Never Yield, New York State Bar Journal (October 2001).

President's Message: Endgame, New York State Bar Journal (September 2001).

President's Message: Meet the Gundersons, New York State Bar Journal (July/August 2001).

President's Message: Family Values, New York State Bar Journal (June 2001).

Reflections on Judicial Independence, The Jurist (Spring/Summer 2001).

Re-Focus on Pro Bono and Bar Activities, New York Law Journal, Apr. 9, 2001, page S7.

On MDPs, CPAs and More, Letter to the Editor, ABA Journal (April 2001).

It Is Time to Remember Our Duty to Pro Bono, the Bar, Community, New York Law Journal, Jan. 22, 2001, page S2.

Ethics 2000 Commission Issues Timely Report, New York Professional Responsibility Report (January 2001).

Neil T. Shayne Memorial Lecture, *Regulating Attorney Conduct: Past, Present, and Future,* 29 Hofstra L. Rev. 247 (2000).

The Heat Subsides: The Future of Multidisciplinary Practice in New York State, New York Professional Responsibility Report (October 2000).

Hot Town, Summer in The City: The Multidisciplinary Practice Debate Heads for a Showdown in New York, New York Professional Responsibility Report (June 2000).

The Pay to Play Saga, 1995-2000, New York Professional Responsibility Report (April 2000).

The Future of Ethics After 1999 Code Amendments, New York Law Journal, Sept. 28, 1999, page A1.

Ethics 2000: What Might Have Been, 19 N. Ill. U. L. Rev. 323 (1999) and Professional Lawyer, Vol. 10, No. 3 (Spring 1999), page 2.

Taking Lessons from Kansas City After Acquittals, New York Law Journal, Mar. 22, 1999, page A11 (with Edward S. Kornreich).

News & Developments, Departing Partners in the Grey Zone, New York Professional Responsibility Report (November 1998).

When Partners Part: Mitigating the Effects of Damaging Departures, New York Professional Responsibility Report (October 1998).

When Partners Part: The Ethical Implications of Lawyer Mobility, New York Professional Responsibility Report (September 1998).

Ethics Committees Deserve Profession's Respect, National Law Journal, Aug. 31, 1998, page A18.

Researching Ethics Issues in New York: Adventures in the Archipelago, New York Professional Responsibility Report (July 1998).

Book Review: Simon's New York Code of Professional Responsibility Annotated, New York State Bar Journal (March/ April 1998).

Proposed Amendments to the Code of Professional Responsibility: A Continuing Process of Change, New York State Bar Journal, May/June 1997, at 42.

Ethical Issues Associated With Law Office Technology (Parts I & II), The Quarter Hour (Vols. I & II, 1997).

Enforcing Death Law is D.A.'s Duty, New York Law Journal, Sept. 1, 1995, page 2.

When Lawyers Represent Their Adversaries: Conflicts of Interest Arising out of the Lawyer-Lawyer Relationship, 23 Hofstra L. Rev. 791 (1995).

An Ethical Lawyer's Guide to LLC Firms, New York Law Journal, Nov. 7, 1994, page 1.

Re-evaluating Expectations in the Attorney Client Relationship, 1994 ABA Professional Lawyer 7.

Editorial: Ito's TV Shows Don't Help Justice, Newsday, Nov. 29, 1994.

Proceed With Caution: Mitigating Damaging Departures after Denburg, New York Law Journal, Nov. 29, 1993, page 1.

Ethical and Professional Issues Associated With Departing Attorneys, published in Employment Law and Human Resource Issues in Law Firms and Professional Partnerships (Prentice Hall Law & Business 1993).

The Attorney Unshackled: SEC Rule 2(e) Violates Clients' Right to Counsel, 57 Notre Dame L. Rev. 50 (1981).

Rehabilitation and Exoneration of the Act of State Doctrine, 12 N.Y.U. J. Int'l L. & Pol. 599 (1980).