WAIVER OF FUTURE CONFLICTS OF INTEREST:
PERMITTED IN GEORGIA?

Middle District of Georgia Bankruptcy Law Institute
Friday, September 7, 2007
Macon, Georgia

Clark D. Cunningham
W. Lee Burge Professor of Law and Ethics
Georgia State University College of Law
P.O. Box 4037
Atlanta, GA 30302-4037
Phone: (404) 413-9168
Fax: (404) 413-9225
Street Address for Courier Delivery:
140 Decatur Street, Suite 400
Atlanta, GA 30303
Email: cdcunningham@gsu.edu
Home Page: http://law.gsu.edu/ccunningham/

The Burge Chair was established by an endowment from the U.S. District Court for the Middle District of Georgia, using funds collected for alleged attorney misconduct to promote ethics, professionalism, and access to justice.
This will be an interactive CLE event, using a recent and widely publicized Georgia case, litigated in the Fulton County Superior Court.

The central issue was the validity of a provision in an engagement letter (to represent the client in a bankruptcy matter) that purported to provide consent for the law firm to represent “parties with interests adverse” to the client at all times in the future and to “waive any actual or potential conflict of interest as long as those other engagements are not substantially related to our services” for the client. When the law firm subsequently entered an appearance in an arbitration against an entity in the same corporate family, the client asked the firm to withdraw from the arbitration. The firm refused, relying on the “future waiver” in the engagement letter.

At the outset of the CLE you will be assigned to one of two discussion groups: (a) representing the law firm or (b) representing the client that is seeking disqualification.

The following materials are to be used for your discussion:


2) Georgia Rule of Professional Conduct 1.7 (Conflict of Interest) and Comments 1-9 (relevant comments underlined).

3) August 8, 2006 letter from Sean Smith to Lawrence Kunin declining to withdraw from arbitration proceeding

4) May 30, 2006 engagement letter (with relevant provisions marked)

At the conclusion of the CLE additional materials will be distributed, including a copy of the court’s decision.
Thursday, August 31, 2006
Conflict claim sours big firm’s work with health giant
Duane Morris handling Atlanta suit against McKesson, is company’s counsel in Pennsylvania case
By GREG LAND, Staff Reporter

[Excerpt]

ACCUSATIONS OF BAD faith, breach of loyalty and attorney activity "bordering on extortion" are flying in Fulton County Superior Court, where medical conglomerate McKesson Corp. wants to have the Duane Morris firm disqualified from representing two Georgians against a McKesson subsidiary.

At issue is whether Duane Morris’ representation of the Georgians against McKesson Information Solutions, while serving as local counsel for two other McKesson subsidiaries in Harrisburg, Pa., is a conflict of interest.

Documents in McKesson’s case against the firm show that Duane Morris lawyers are relying on an engagement letter McKesson officials in the Pennsylvania case signed that waived conflicts that are not "substantially related" to that matter.

The case highlights the ethical risks when a megafirm like Duane Morris, which has 600-plus lawyers in 18 offices around the world, works for a huge company such as McKesson, a supplier of medical and health-care technology, training and pharmaceuticals that claims more than $80 billion in annual revenue.

The problem started in April, when McKesson Medication Management and McKesson Automation contracted with Duane Morris’ office in Harrisburg, Pa., to serve as local outside counsel in a case being heard in U.S. Bankruptcy Court in which the two companies are among several creditors.

In July, Duane Morris’ Atlanta office was hired by Nan and Alex Smith to help in their claims against McKesson Information Systems, the name for the health-care business they sold in 1994 to a company that has since been acquired by McKesson.

The Smiths took McKesson Information to arbitration to settle their claims that McKesson breached a noncompete agreement and committed fraud, based on allegations that the company shipped empty boxes to inflate sales figures several years earlier.

The trouble is spelled out in communication, included in the Fulton case file, between the Atlanta firm of Morris Manning & Martin, which was lead counsel for the McKesson subsidiaries in the Pennsylvania bankruptcy case, and Duane Morris’ Atlanta office.
On Aug. 8, Duane Morris’ Sean R. Smith sent a letter to Lawrence H. Kunin of Morris Manning. (There was no response by press time to an inquiry as to whether Sean R. Smith is related to Alex and Nan Smith.)

Smith argued that Duane Morris’ engagement letter with McKesson clients in Pennsylvania expressly limited their attorney-client relationship to serving as local counsel to the two companies for the bankruptcy case.

"You recently stated that ‘McKesson’ believes that representation of one McKesson entity, under any circumstances, would automatically give rise to a conflict by representation against another McKesson company," wrote Smith. "We were very surprised to learn this, because the Engagement Letter was revised at the request of [McKesson], and the terms that specify that Duane Morris represents only McKesson Medical and McKesson Automation and not any affiliates and the waiver of conflicts were not identified as objectionable."

The agreement letter, signed by Duane Morris’ Harrisburg partner Brian Bisignani and included in the Fulton case file, contains this statement: "Given the scope of our business and the scope of our client representations … it is possible that some of our clients or future clients will have matters adverse to 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 McKesson."

The next paragraph, however, contains a caveat that the waiver "shall not apply in any instance where … we have obtained proprietary or confidential information."

Duane Morris’ Smith wrote that that section "contemplates situations exactly like the current one," and conforms to the American Bar Association’s "preferred method for resolving potential conflicts in the corporate affiliate context before they arise."

Should McKesson insist upon its position, Smith concluded, Duane Morris would bow out of the bankruptcy proceedings entirely.

Three days later, Kunin and Morris Manning partner Joseph R. Manning filed McKesson’s Fulton case against Duane Morris. The complaint terms the firm’s threat of withdrawing as "bordering on extortion."

Pointing to the allegations of malfeasance the Smiths allege, Manning and Kunin wrote, "It is hard to imagine a more blatant breach of loyalty than to accuse your current client of fraud and then withdraw from the initial representation as pure punishment."

McKesson Information, the subject of the arbitration, and McKesson Automated are both part of a larger segment of the corporation, which has a single president and shares a legal department headquartered in Alpharetta, the complaint adds. . . .

Staff Reporter Greg Land can be reached at gland@alm.com.
GEORGIA RULE 1.7 — CONFLICT OF INTEREST: GENERAL RULE

(a) 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, except as permitted in (b).

(b) If client consent is permissible a lawyer may represent a client notwithstanding a significant risk of material and adverse effect if each affected or former client consents, preferably in writing, to the representation after:
(1) consultation with the lawyer,
(2) having received in writing reasonable and adequate information about the material risks of the representation, and
(3) having been given the opportunity to consult with independent counsel.

(c) Client consent is not permissible if the representation:
(1) is prohibited by law or these rules;
(2) includes the assertion of a claim by one client against another client represented by the lawyer in the same or substantially related proceeding; or
(3) involves circumstances rendering it reasonably unlikely that the lawyer will be able to provide adequate representation to one or more of the affected clients.

The maximum penalty for a violation of this Rule is disbarment.

Comment (emphasis added)

Loyalty to a Client

[1] Loyalty is an essential element in the lawyer’s relationship to a client. If an impermissible conflict of interest exists before representation is undertaken the representation should be declined. The lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

[2] If an impermissible conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1.16: Declining or Terminating Representation. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9: Conflict of Interest: Former Client. See also Rule 2.2(b): Intermediary. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3: Diligence; and Scope.

[3] As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client’s consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

[4] Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer’s other competing responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.
Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and Consent
[5] A client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a) with respect to representation directly adverse to a client, and paragraph (b) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. If consent is withdrawn, the lawyer should consult Rule 1.16: Declining or Terminating Representation and Rule 1.9: Conflict of Interest: Former Client.

Lawyer's Interests
[6] The lawyer's personal or economic interests should not be permitted to have an adverse effect on representation of a client. See Rules 1.1: Competence and 1.5: Fees. If the propriety of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client objective advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation
[7] Paragraph (a) prohibits representation of opposing parties in litigation. Simultaneous representation of parties whose interests in litigation may conflict, such as coplaintiffs or codefendants, is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met. Compare Rule 2.2: Intermediary involving intermediation between clients.

[8] Ordinarily, 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. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government entity is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

[9] A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases while they are pending in different trial courts, but it may be improper to do so should one or more of the cases reach the appellate court.

[Comments 10 -15 not included]
August 8, 2006

By Electronic and U.S. Mail

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

Re:  McKesson Medication Management LLC and McKesson Automation, Inc.

Dear Lawrence:

As you are aware, Duane Morris LLP is local counsel for McKesson Medication Management LLC (“McKesson Medication”) and McKesson Automation, Inc. (“McKesson Automation”) in a bankruptcy matter pending in Harrisburg, Pennsylvania (the “Bankruptcy”). The representation of McKesson Medication and McKesson Automation is governed by terms specifically outlined in the engagement letter dated April 27, 2006 (the “Engagement Letter”), which was amended at the request of McKesson Medication and McKesson Automation on May 30, 2006. Your firm, Morris Manning, LLP (“Morris Manning”), is lead counsel in the Bankruptcy.

You have informed us that “McKesson” believes that our representation of Nan and Alex Smith in an arbitration proceeding (the “Arbitration”) before the American Arbitration Association and against McKesson Information Solutions, LLC (“McKesson Information”) constitutes an irreconcilable conflict of interests. We understand that “McKesson” is comprised of several companies and businesses headquartered in various locations across the country, and we understand that the relationship of the McKesson entities in question is primarily one of similar ownership. We have given this situation considerable attention, and we disagree with your assertion that a conflict exists. Moreover, we believe that Duane Morris is in compliance with the Engagement Letter and its obligations as attorneys.

As set forth in more detail below, the terms of the controlling Engagement Letter clearly set forth that our clients, for any and all purposes – including conflicts, are limited to McKesson Medication and McKesson Automation. We are unwilling to continue our representation of McKesson Medication and McKesson Automation under terms different than those in the Engagement Letter. Therefore, we ask that McKesson Automation and McKesson Medication
reconsider their position and notify me of their agreement with Duane Morris continuing as local counsel in the Bankruptcy under the terms set forth in the Engagement Letter, specifically including that Duane Morris’ clients are only McKesson Medication and McKesson Automation. If you are able to do so, Duane Morris will agree to continue to represent McKesson Automation and McKesson Medication. If we do not reach agreement on this issue, we will regrettably have no other choice but to terminate our engagement with McKesson Medication and McKesson Automation. While we do not believe that there are any legitimate conflict issues with our current representation of the Smiths in connection with the Atlanta Arbitration, McKesson Automation’s and McKesson Medication’s decision on this point should conclusively resolve all concerns raised by McKesson Information in the Arbitration.

I. Our Understanding of the Relevant Facts.

Based on initial investigations, our understanding of the relevant facts is as follows:

1. By the Engagement Letter, McKesson Medication and McKesson Automation retained Duane Morris to act as local counsel in the Bankruptcy on or about April 27, 2006. The Engagement Letter was amended at the request of McKesson Medication and McKesson Automation.

2. The engagement is limited. Duane Morris is acting solely as local counsel and only in the Bankruptcy and not in connection with any other matters. See Engagement Letter at 1. Duane Morris does not represent any McKesson entities other than McKesson Medication and McKesson Automation. See Engagement Letter at 3. The Engagement Letter anticipates certain potential conflicts and contains a prospective waiver of such conflicts. See Engagement Letter at 3.

3. The terms of the Engagement Letter were specifically negotiated by the parties, including Morris Manning, outside counsel for McKesson Medication and McKesson Automation. Indeed, an attorney acting on behalf of McKesson Medication and McKesson Automation sent an email after the representation commenced requesting that several terms contained in the Engagement Letter be struck (purportedly at the specific instructions of McKesson Medication and McKesson Automation). McKesson Medication and McKesson Automation specifically agreed to the other terms of the Engagement Letter, including the term limiting the representation to the Bankruptcy, the specification of the two entities that Duane Morris represents, the agreement that Duane Morris does not represent any affiliates, subsidiaries, etc., and the prospective waiver.

4. In connection with the Bankruptcy Engagement, Duane Morris has had very limited contact directly with any employee at any McKesson-owned entity and
has received little or no confidential information belonging to any McKesson-owned entity.

5. On July 19, 2006, Duane Morris entered an appearance in the Arbitration as counsel for Nan and Alex Smith (collectively, the “Smiths”). In the Arbitration, the Smiths allege that McKesson Information breached provisions in Non-Competition Agreements.

6. McKesson Information is the successor to HBO & Company (“HBOC”). In the context of the Arbitration, you had informed us that HBOC was acquired in its entirety and has operated as McKesson Information since that time, primarily under the leadership of the same individuals that led and managed HBOC.

7. Neither McKesson Medication nor McKesson Automation are parties to or involved in any way in the Arbitration.

8. You contacted Duane Morris on or about July 25, 2006 and stated to us that, contrary to the terms of the Engagement Letter, essentially the entire family of McKesson companies operate as a single entity for conflicts purposes, that as a matter of policy the McKesson companies never waive any potential or actual conflicts, and that “McKesson” believes that Duane Morris is precluded from representing the Smiths in the Arbitration due to its representation of McKesson Medication and McKesson Automation as local counsel in the Bankruptcy.

9. It appears that all three McKesson entities at issue have different offices and principal places of business (all located in different states) and that there are no common officers.

10. You have communicated that you believe the following two cases are controlling:


II. Based on Our Understanding of Relevant Facts, We Believe that No Conflict Exists.

Duane Morris has carefully reviewed the Ramada and Worldspan cases, as well as other relevant authorities and believes that no conflict exists as a result of Duane Morris’ representations in the Bankruptcy and the Arbitration.
A. Duane Morris Does Not Represent and Never Has Represented McKesson Information.

Duane Morris' representation in the Arbitration is not adverse to any clients of Duane Morris. McKesson Information is the defendant in the Arbitration. Duane Morris does not represent McKesson Information. As noted above, the Engagement Letter states explicitly that Duane Morris represents only McKesson Medication and McKesson Automation and not any affiliated companies (i.e., not McKesson Information). McKesson Medication and McKesson Automation are not parties to the Arbitration, and, to our knowledge, their rights and interests are not at issue in the Arbitration.

You recently stated that "McKesson" believes that representation of one McKesson entity, under any circumstance, would automatically give rise to a conflict by representation against another McKesson company because of the way "McKesson" conducts business. We were very surprised to learn this, because the Engagement Letter was revised at the request of McKesson Medication and McKesson Automation, and the terms that specify that Duane Morris represents only McKesson Medication and McKesson Automation and not any affiliates and the waiver of conflicts were not identified as objectionable to McKesson Medication and McKesson Automation.

According to a well-known American Bar Association (the "ABA") opinion, the manner in which Duane Morris identified specific McKesson entities in the Engagement Letter is the preferred method for resolving potential conflicts in the corporate affiliate context before they arise. See ABA Formal Opinion 95-390 (January 25, 1995) ("Clearly, 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."). The ABA also instructs that inquiry into whether a client's subsidiaries will be treated as clients is, in part, a matter of the lawyer's and client corporation's expectations:

The client-lawyer relationship is principally a matter of contract, and the contract may be either express or implied. Thus, the entities within a corporate family that are to be considered clients may have been expressly identified as clients, or they may have become entitled to be so treated by reason of the way the representation of one of the members of the corporate family has been handled. In addition, it may be one of the terms of the engagement that the corporate client expects some or all of its affiliates to be treated as clients for purposes of Rule 1.7 -- i.e., that the lawyer will not accept engagements that would be prohibited by that Rule if the affiliates were clients.
See id. at 4.

The parties’ expectations are clearly outlined in the Engagement Letter. The Engagement Letter specifies whom Duane Morris does and does not represent. When negotiating the Engagement Letter, McKesson Medication and McKesson Automation did not inform Duane Morris that they would require Duane Morris to consider as its client a sister company. Therefore, it is reasonable that Duane Morris expected that it represented only the corporations specified in the Engagement Letter.

In addition to being in contrast with the parties’ explicit expectations, the Ramada case you cited rejects the argument that Duane Morris has accepted a per se representation of all the McKesson-affiliated companies.

In seeking disqualification of the attorneys, the defendant urged a prophylactic rule which would disqualify attorneys who had represented any affiliated corporation of a party. This proposal was based on the idea that when two corporations are subject to common ownership and control, any injury or risk to one will necessarily cause injury or risk to the other. The [Pennwalt] court rejected this prophylactic rule: “Vigorous advocacy cannot change the fact that [the sister corporation] is a corporate entity distinct from [the defendant] and [the parent].”


The Ramada court did not announce a clear rule of law for determining whether a sister company is a “client” for disqualification purposes, but looked to the facts and circumstances of the representation. Ramada, 988 F. Supp. at 1465. The Ramada court noted that other courts have observed the reality that the co-subsidiary relationship is “more attenuated that that of a parent corporation and its subsidiary.” Id.

In Ramada, the court found that a sister company was a “client” for disqualification purposes because the companies shared the same headquarters, had the same corporate principals and were serviced by the same legal department. See id. The Ramada court also discussed Apex Oil Co., Inc. v. Wickland Oil Co., 1995 Dist. LEXIS 6398 (E.D. Cal 1995), in which the opposite outcome was reached when the companies had mostly different management and senior officers and had different principal places of business and mailing addresses. The outcomes are consistent with the guidance offered by the ABA:

[W]hole ownership may well entail not merely a shared legal department but a management so intertwined that all members of
the corporate family effectively operate as a single entity; and in those circumstances representing one member of the family may effectively mean representing all the others as well. Conversely, where two corporations are related only through stock ownership, the ownership is less than a controlling interest and the lawyer has had no dealing whatever with the affiliate, there will rarely be any reason to conclude that the affiliate is the lawyer's client.


Based on the facts known to us, it appears that the current situation is much closer to the facts of Apex than Ramada. You stated earlier in the Arbitration that McKesson Information is managed and led by the former HBOC leadership, not other McKesson personnel. In addition, information that is available on the Georgia Secretary of State's website shows that all three McKesson entities at issue have different offices and principal places of business (all located in different states) and that there are no common officers. Your recent general statements that McKesson Medication, McKesson Automation and McKesson Information are all managed by the same individuals appears to be in conflict with your earlier statements and the publicly available information. Based on the facts available to us and the parties' expressly-negotiated understanding that Duane Morris does not represent any McKesson entity other than McKesson Medication and McKesson Automation, we do not believe that McKesson Information is a "client" for disqualification purposes. Thus, there is no conflict.

B. **There Is No Substantial Relationship Between the Duane Morris' Representations in the Bankruptcy and the Arbitration.**

Even if McKesson Information were a "client" for disqualification purposes, Duane Morris would not be precluded from its representation in the Arbitration because the Bankruptcy and the Arbitration are entirely unrelated. See Ramada 988 F. Supp. at 1465-66. The Bankruptcy involves a rental agreement with a hospital in Pennsylvania. Duane Morris is local counsel in the Bankruptcy, and lead counsel has the vast majority of contact with the client. The Arbitration involves Non-Compete Agreements with two individuals living in Georgia. None of the parties to any of the lease or the Non-Compete Agreements is the same. Accordingly, there is no substantial relation that would require disqualification of Duane Morris.

III. **The Prospective Waiver Covers this Exact Situation.**

You recently stated that the McKesson companies, as a corporate policy, never waive any potential conflicts and that "McKesson" does not consent to any conflict brought about by Duane Morris' representation in the Arbitration. However, Duane Morris was not advised of any such policy, and the Engagement Letter, which governs the relationship, contemplates situations exactly like the current one:
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 Medication and McKesson Automation] while we are representing [McKesson Medication and McKesson Automation]. We understand that [McKesson Medication and McKesson Automation have] no objection to our representation of parties with interests adverse to [McKesson Medication and McKesson Automation] and waive any actual or potential conflict of interest as long as those other engagements are not substantially related to our services to [McKesson Medication and McKesson Automation].

Engagement Letter at 3.

As noted above, McKesson Medication and McKesson Automation reviewed and revised the Engagement Letter but did not strike the advance waiver, so it is entirely inappropriate for McKesson to now take the position that it never waives any conflicts within its entire corporate affiliated family. If McKesson has a policy of not waiving any conflicts, it should have advised Duane Morris of that fact by revising the Engagement Letter accordingly. As discussed above, the Arbitration is not substantially related to Duane Morris’ services in the Bankruptcy. Indeed, there is no relation at all. Accordingly, we believe the prospective waiver clause, by its terms, is applicable to the current situation.

You have cited to the Worldspan case for the proposition that the prospective waiver in the Engagement Letter is not applicable under the circumstances. The primary distinction in the Worldspan case and the current circumstances, however, is that McKesson Information is not a client of Duane Morris for the reasons explained above. The Worldspan court found this fact to be of critical importance:

It is the opinion of this Court that future 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.
Worldspan, 5 F. Supp. 2d at 1360. Duane Morris is not suing a client, as was the case in Worldspan. Therefore, the reasoning and outcome of the Worldspan case are not applicable.

IV. Duane Morris’ Representation of McKesson Medication and McKesson Automation Moving Forward.

Duane Morris is unwilling to represent McKesson Medication and McKesson Automation on terms other than those parties already negotiated and agreed upon in the Engagement Letter. We relied upon those contractual promises when we took on the representation. Moreover, as I am sure you are aware, the burden on the Smiths to find new counsel on the eve of an Arbitration hearing would be considerable, and in certain respects could be beneficial to McKesson Information. Therefore, we cannot agree to McKesson Medication’s and McKesson Automation’s repudiation of the prospective waiver or other terms of the Engagement Letter, nor can we expand our representation to include parties specifically excluded under the Engagement Letter.

We ask that you and your clients reconsider the positions you have taken regarding the alleged conflict and to abide by the Engagement Letter. If you choose not to, we will assist McKesson Medication and McKesson Automation in finding new counsel in the Bankruptcy and will transition the representation of McKesson Medication and McKesson Automation to new local counsel.

Sincerely yours,

Sean R. Smith

[Signature]

Sean R. Smith

---

1 In addition, given the sophistication of those involved in reviewing the Engagement Letter, it was entirely appropriate for Duane Morris to expect that McKesson Mediation and McKesson Automation would abide by the advance waiver.
May 30, 2006

McKesson Medication Management LLC
McKesson Automation
c/o Daniel P. Sinaiko, Esq.
Morris, Manning & Martin LLP
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, GA 30326-1044

Re: Legal Representation

Dear Dan:

Thank you for selecting Duane Morris to represent McKesson Medication Management LLC and McKesson Automation (collectively, "McKesson") as local counsel in connection with the action entitled In re Moshannon Valley Citizens Inc. t/a Philipsburg Area Hospital pending in the United States Bankruptcy Court for the Middle District of Pennsylvania. We have agreed that our engagement is limited to performance of services related to this action. Because we are not general counsel to McKesson, our acceptance of this engagement does not involve an undertaking to represent McKesson or its interests in any other matter. In particular, our present engagement does not include responsibility for review of insurance policies to determine the possibility of coverage for the claim asserted in this matter, for notification of insurance carriers about the matter, or for advice about disclosure obligations concerning the matter under the federal securities laws or any other applicable law.

Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the litigation or various courses of action and the results that might be anticipated. Any such statement made by any partner or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed as a promise or guarantee.

Our fees are based on the time spent and the regular hourly rates of each attorney and legal assistant performing services on your behalf. The hourly rates vary from person to person and are adjusted periodically (usually in January each year). We will be glad to provide you with a schedule of rates presently in effect for all the lawyers, paralegals and legal assistants who may be performing work on this matter, if you so desire. Most of the work on the matter will be
handled by Sommer L. Ross and me. My current rate is $445 per hour and Ms. Ross’ current rate is $250 per hour. To the extent possible, we will endeavor to have associates and/or legal assistants, at lower rates, handle appropriate tasks.

Other factors may be taken into consideration in determining our fees, including the novelty and difficulty of the questions involved; the skill requisite to perform the services properly; the experience, reputation and ability of those performing the services; the time limitations imposed by you or the circumstances; the amount involved and results obtained; and any other factors that may be relevant in accordance with applicable rules of professional conduct. However, these factors will not result in our fees exceeding the indicated amounts based on our hourly rates without prior discussion with you.

We may at any time request an advance fee retainer for any professional fees associated with the matter. Retainers and other funds that belong to McKesson will be held without interest on account by the firm, until disbursed. Such funds may be applied in payment of McKesson’s account for legal fees owed or other expenses incurred on its behalf.

The firm typically incurs costs in connection with legal representation. These costs may include such matters as long distance telephone charges, special postage, delivery charges, telecopy and photocopy charges and related expenses, travel expenses, meals and use of other service providers, such as printers or experts. In litigation matters, such expenses may also include filing fees, deposition costs, process servers, court reporters and witness fees. We separately bill for computerized legal research and related expenses. McKesson also agrees to pay the charges for copying documents for retention in our files. You authorize us to retain any investigators, consultants or experts necessary in our judgment to represent McKesson’s interests in the bankruptcy proceeding. Please note, if we anticipate that substantial expenses will be incurred, we may request a deposit prior to incurring such expenses or we may request that McKesson pay the vendor directly.

Our statements will be rendered monthly and are payable within 30 days. In the event that our statements are not timely paid, or that payment terms satisfactory to us are not established, we reserve the right to renegotiate the terms of this engagement, to terminate it and withdraw from this or any representation of McKesson, and/or to pursue our other remedies. We are happy to discuss our billings with you at any time and will welcome the opportunity to address any questions you may have.

Once a trial or hearing date is set, we will require payment of all amounts then owing to us and to deposit with us the fees we estimate will be incurred in preparing for and completing the trial or arbitration, as well as jury fees and arbitration fees likely to be assessed. If you fail to timely pay any additional deposit requested, we will have the right to cease performing further work and to withdraw from the representation. Similarly, at the time at which any matter for
which we have been engaged requires an appeal, we reserve the right to receive an appropriate retainer to cover payment of our services and costs through the appeal.

As we have discussed, the fees and costs relating to this matter are not predictable. Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. Any estimate of fees and costs that we may have discussed represents only an estimate of such fees and costs. It is also expressly understood that payment of the firm’s fees and costs is in no way contingent on the ultimate outcome of the matter.

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 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 obliged to notify McKesson when we undertake such a matter that may be adverse to McKesson.

Similarly, new lawyers frequently join our firm. These lawyers may have represented parties adverse to McKesson while employed by other law firms or organizations. We assume, consistent with ethical standards, that McKesson has no objection to our continuing representation of McKesson notwithstanding our lawyers’ prior professional relationships.

This will also confirm that unless we reach an explicit understanding to the contrary, we are being engaged by and will represent McKesson Medication Management LLC and McKesson Automation, and not any parent, subsidiary or affiliated entities of McKesson Medication Management LLC and McKesson Automation, and that we are not being engaged to represent any officers, directors, members, partners, shareholders or employees of McKesson Medication Management LLC and McKesson Automation.

Unless previously terminated, our representation of McKesson Medication Management LLC and McKesson Automation will terminate upon our sending our final statement for services rendered in this matter. Following such termination, any otherwise nonpublic information
supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, papers and property will be returned promptly upon receipt of payment of outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work products such as drafts, notes and internal memoranda. All such documents retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement.

Please do not hesitate to call me if you have any questions or concerns. Once again, we appreciate your confidence in Duane Morris and look forward to working with you to bring this matter to a successful conclusion.

Very truly yours,

[Signature]

Brian W. Bisignani

BWB/nas