UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11**
	:	**Case No. 95 B 42777 (BRL)**
BRADLEES STORES, INC., et al.,	:	**Jointly Administered**
	:	**With Case Nos. 95 B 42778**
Debtors.	:	**through 95 B 42784**

APPLICATION OF LOOMIS SAYLES & COMPANY, L.P. FOR REIMBURSEMENT OF PROFESSIONAL COSTS AND EXPENSES PURSUANT TO BANKRUPTCY CODE § 503(b)

Loomis Sayles & Company, L.P. ("**Loomis Sayles**"), by and through its counsel, Hebb & Gitlin, a Professional Corporation ("**H&G**"), hereby submits its Application of Loomis Sayles & Company, L.P. for Reimbursement of Professional Costs and Expenses Pursuant to Bankruptcy Code § 503(b) (the "**Application**"), and, in support thereof, respectfully represents as follows:

INTRODUCTION

1. By this Application, Loomis Sayles requests an order of this Court pursuant to Sections 503(b)(3)(D) and 503(b)(4) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (as amended, the "**Bankruptcy Code**") and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") awarding Loomis Sayles (a) an allowance of reasonable compensation in the amount of $278,401.63 (the "**Fees**") for professional services rendered by H&G on behalf of Loomis Sayles during the period November 18, 1996 through and including February 2, 1999 (the

"**Application Period**") and (b) reimbursement of actual and necessary expenses in the aggregate amount of $21,598.37 (the "**Expenses"**) incurred by H&G in connection with the rendition of such professional services.[1]

2. Attorneys at H&G expended 1,118.8 hours on the within case during the Application Period, while legal assistants expended 31.8 hours, producing an aggregate lodestar rate (excluding legal assistants) of $249.29 per hour.

PROCEDURES

3. H&G has provided notice of this Application as set forth in the certified statement (the "**Certified Statement**") annexed hereto as Exhibit A. The Certified Statement is required by the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases (as amended, the "**SDNY Guidelines**") contained in the Administrative Orders of the United States Bankruptcy Court for the Southern District of New York. In addition, as set forth in the Certified Statement, H&G has complied with the provisions of (i) the SDNY Guidelines and (ii) the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, dated January 30, 1996 (the "**U.S. Trustee's Guidelines**"), except as disclosed herein, or in the Certified Statement.

[1] The total professional fees and expenses incurred by Loomis Sayles during the Application Period actually amount to $303,928.37. However, pursuant to § 12.05 of the Second Amended Joint Plan of Reorganization of Bradlees Stores, Inc. and Affiliates Under Chapter 11 of the Bankruptcy Code, Loomis Sayles agreed to limit its request pursuant to § 503(b) of the Bankruptcy Code to an amount of $300,000.

BACKGROUND

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and the "**Standing Order of Referral of Cases to Bankruptcy Judges,**" dated July 10, 1984, of District Court Judge Robert T. Ward. Venue of this case and the Application is proper in this district pursuant to 28 U.S.C. §§ 1408 et seq.

5. On June 23, 1995 (the "**Petition Date**"), Bradlees Stores, Inc., New Horizons of Yonkers, Inc., Bradlees, Inc., Bradlees Administrative Co., Dostra Realty Co., Inc., Maximedia Services, Inc., New Horizons of Bruckner, Inc. and New Horizons of Westbury, Inc. (collectively, the "**Debtors**") commenced the within cases (collectively, the "**Case**") under chapter 11 of the Bankruptcy Code, and have continued in management and control of their businesses and property as debtors in possession pursuant to Bankruptcy Code §§ 1107 and 1108.

6. Loomis Sayles is the investment manager for certain discretionary accounts that, in the aggregate, hold approximately $80 million of the $225 million total outstanding bondholder debt (the "**Bondholders**") against the Bradlees, Inc. ("**Holdings**") estate, of which State Street Bank and Trust Company is currently the Indenture Trustee ("**State Street**"). As such, Loomis Sayles holds approximately 35% of the aggregate Bondholder debt, and is the largest individual creditor of the Holdings estate.

7. On July 6, 1996, the United States Trustee appointed a single, omnibus Official Committee of Unsecured Creditors (the "**Committee**") to represent the unsecured creditors of both the Holdings estate, and Bradlees Stores, Inc. ("**Stores**"), the operating company. The Committee

retained the law firm of Otterbourg, Steindler, Houston & Rosen, P.C. as its counsel ("**Committee Counsel**"), and Loomis Sayles was elected as co-chairperson to the Committee.

8. Loomis Sayles has been an active member of the Committee generally as co-chairperson, and specifically has represented the unsecured creditor interests of Holdings on the Committee in a manner consistent with its overall fiduciary duties.

9. On or about April 13, 1998, the Debtors filed the Disclosure Statement and Plan (the "**Original Disclosure Statement and Plan**"). On or about September 25, 1998, the Debtors filed the First Amended Disclosure Statement Pursuant to Bankruptcy Code § 1125 for Joint Plan of Reorganization of Bradlees Stores, Inc. and Affiliates Under Chapter 11 of the Bankruptcy Code (the "**Amended Disclosure Statement and Plan**"), and on January 26, 1999, the Debtors filed the Second Amended Joint Plan of Reorganization of Bradlees Stores, Inc. and Affiliates Under Chapter 11 of the Bankruptcy Code (the "**Second Amended Plan**").

10. On January 27, 1999 this Court confirmed the Second Amended Plan, which became "effective" (as defined in the Second Amended Plan) on February 2, 1999 (the "**Effective Date**").

RETENTION OF HEBB &GITLIN

11. On or about November 18, 1996, Loomis Sayles engaged H&G to represent Loomis Sayles in this Case.

12. H&G has rendered the services described in Paragraphs 14 to 20 below and itemized more particularly in Exhibit B annexed hereto, and has actually incurred the expenses set forth in Exhibit D annexed hereto. A summary of the billed hours and hourly rate of each H&G attorney and legal assistant who rendered services on this matter is set forth in Exhibit C annexed hereto.

NARRATIVE STATEMENT OF SERVICES RENDERED

13. Hebb & Gitlin is a professional corporation engaged in the practice of law in several focused practice areas for financial institutions and investors. Primary practice areas include: (a) domestic and international reorganizations and workouts, (b) domestic and international institutional corporate financial transactions, (c) investment and insurance litigation, and (d) real estate finance and workouts.

14. The overwhelming proportion of the work performed by Loomis Sayles during the Application Period involved negotiating a consensual resolution of the dispute surrounding the Intercompany Claim (as discussed more fully below), and negotiation of a plan of reorganization and, in particular, its treatment of the unsecured creditors at the Holdings estate, including Bondholders.

15. The primary issue of contention between the Holdings estate and the Stores estate centered around the validity of a $281.8 million intercompany claim owed by Stores to Holdings (the "**Intercompany Claim**"). The Intercompany Claim was by far the single largest claim against the Stores estate, comprising approximately 40% of all the claims against Stores. The Intercompany Claim was also the primary asset in the Holdings estate.

16. A substantial degree of confusion surrounded the genesis and composition of the Intercompany Claim notwithstanding a detailed and costly investigation undertaken by the Debtors' counsel. Creditors of the Stores estate, represented by Committee members, and members of an ad hoc committee of Stores creditors[2] (the "**Ad Hoc Committee**"), argued that the Intercompany Claim

[2] The members of the ad hoc committee consisted of trade claim holders, the composition of which changed from time to time, but who included Anvil Capital and Stonington Management

should be disallowed, or at the very least, drastically reduced. Loomis Sayles argued that the Intercompany Claim should be allowed because no compelling factual or legal showing had been made to the contrary by the Stores estate creditors. This issue quickly became the single largest inter-creditor dispute in the Case which delayed the formulation of a plan, and threatened to plunge the estate into costly and time consuming litigation between the creditors of the Holdings and Stores estates.

17. Creditors of the Holdings and Stores estates stood on opposite ends of the Intercompany Claim. The smaller the Intercompany Claim, the better for the Stores estate. On the other hand, the larger the Intercompany Claim, the better for the Holdings estate. Despite exhaustive analysis, almost all major constituencies differed on their proposed treatment of the Intercompany Claim under a plan.

18. During or about November 1996, Loomis Sayles, as co-chairperson of the Committee, was becoming increasingly concerned that the unsecured creditors of the Holdings estate were not being adequately represented by the single omnibus Committee. The overwhelming majority of the members of the Committee were exclusively creditors of the Stores estate. Only Loomis Sayles and State Street represented the interests of the Bondholders at Holdings. Committee Counsel, because they represented the entire Committee, was precluded, from becoming involved in the intercreditor dispute between the Holdings and Stores estates because of potential conflicts.

Corporation.

19. The parties faced litigation as a result of the conflict over the treatment of the Intercompany Loan, and Committee Counsel was conflicted and was unable to take any position on the treatment of the Intercompany Claim. Accordingly, Loomis Sayles felt that it was important, indeed critical to the case to retain H&G to become involved to represent the interests of the Holdings estate unsecured creditors and to try and find a consensual resolution to the dispute in lieu of protracted and costly litigation.

20. In an effort to preserve and enhance the value of both the Holdings and Stores estate, to maximize the recovery of Holdings unsecured creditors, and to facilitate the formulation of a plan which properly compensated the Holdings estate unsecured creditors, Loomis Sayles, with the assistance of H&G, undertook the following:

(a) Loomis Sayles undertook an analysis of the issues in dispute from the perspective of the Holdings estate. Thereafter, Loomis Sayles analyzed and researched the factual genesis of the Intercompany Claim to determine its various component parts.[3] A thorough legal analysis was also conducted to determine issues relating to subordination, subrogation of claims, and the distribution of assets and the allocation of value in the context of a corporate group in a chapter 11 case.

(b) Working closely with the Committee's financial advisor, Ernst & Young LLP, Loomis Sayles helped develop a hypothetical valuation of the Debtors' estates, both as a going concern and in the context of a liquidation. These distribution models, for the first time

[3] Wherever possible, H&G utilized the work product of the Debtors' and Committee's professionals in order to avoid the incurrence of unnecessary and duplicative fees and expenses.

in the Case, focused attention on a recovery for Bondholders and other unsecured creditors at the Holdings estate, and established Holdings unsecured creditors as a party in interest in any plan of reorganization being negotiated.

(c) Loomis Sayles, based on legal analysis and certain financial presumptions, formulated and prepared various distribution models from a Holdings estate perspective. These models showed a recovery to the Holdings estate unsecured creditors under various scenarios based on certain legal and financial assumptions surrounding the allowance of the Intercompany Claim and other inter-estate disputes.[4]

(d) Loomis Sayles tirelessly negotiated for fair treatment of Bondholder and other unsecured creditor claims at Holdings with members of the Committee, the Debtors, the senior bank group and the Ad Hoc Committee. This involved preparing for, and attending, numerous meetings with the Committee and the Ad Hoc Committee. Members of the Ad Hoc Committee owned a majority of the unsecured claims in the Stores estate, and so much of Loomis Sayles' efforts were focused on trying to reach an equitable division of value with the Ad Hoc Committee, as well as the senior bank group which held secured claims both at Holdings and Stores.

(e) Once retained, H&G generally attended all status conferences and hearings before the bankruptcy court where the value of the Debtors and inter-estate matters were at issue to ensure that the Holdings estate was properly represented. These appearances

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[4] In addition to the Intercompany Claim dispute, there was also a dispute surrounding the allocation of a tax refund which was due to both Holdings and Stores.

included supporting the Committee in the removal of its former CEO, and supporting the Debtors and the Committee in their opposition to the Ad Hoc Committee's motion to appoint an examiner. H&G, on behalf of Loomis Sayles, constantly and consistently tried to ensure that the interests of the Holdings estate unsecured creditors were taken into account and were not simply ignored by the other constituents.

(f) Loomis Sayles was actively involved in negotiating a plan term sheet with the Ad Hoc Committee and senior bank group, and thereafter in the formulation of the plan itself, and allocation of value in the reorganized Bradlees. Loomis Sayles assisted in the drafting of relevant provisions in the Original Disclosure Statement and Plan, and Amended Disclosure Statement and Plan, which dealt with the treatment of unsecured creditors at the Holdings estate, and in particular the terms of the new warrants to be issued pursuant to the Second Amended Plan.

21. The efforts of Loomis Sayles, assisted by H&G, caused all of the various constituents to examine more seriously the claim of the Holdings estate, and to acknowledge that a conflict existed which needed to be resolved. Loomis Sayles worked with, and through, the Committee to examine both sides of the dispute and to reach a compromise, first with the full Committee, and thereafter with the Banks, Ad Hoc Committee and the Debtors.

22. As a direct consequence of Loomis Sayles' involvement in representing the interests of Bondholders (and as a consequence all the unsecured creditors at Holdings), all unsecured creditors at Holdings, including Loomis Sayles, received a ratable distribution of new warrants under the Debtors' Second Amended Plan representing approximately 5% of the common stock in the

reorganized Bradlees, notwithstanding the fact that the Original Disclosure Statement and Plan awarded nothing to unsecured creditors at Holdings.

23. Accordingly, Loomis Sayles respectfully submits that H&G's involvement and contribution have rendered a direct benefit to the unsecured creditors of the entire Holdings and Stores estates. Were it not for the efforts of Loomis Sayles to reach a compromise of the Intercompany Claim, it is very likely that there would have been inter debtor litigation over the Intercompany Claim which would have resulted in the dissipation of estate assets at both Holdings and Stores. The resolution of the Intercompany Claim dispute enhanced the value of both the Holdings and Stores estates by avoiding costly and time consuming litigation. Furthermore, but for intervention of Loomis Sayles, it is likely that unsecured creditors at Holdings would have received no value under the Debtors' plan as confirmed.

ANALYSIS

24. Section 503(b) of the Bankruptcy Code provides that the court may allow payment, as an administrative expense, for legal expenses incurred "in making a substantial contribution in a case under chapter 9 or 11 of [the Bankruptcy Code]." 11 U.S.C. §§ 503(b)(3)(D), 503(b)(4).[5]

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[5] 11 U.S.C. § 503 provides in relevant part: "(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including –

. . .

"(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by –

. . .

"(D) a creditor, an indenture trustee, an equity security holder, or committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

"Compensation based on substantial contribution is designed to promote meaningful participation in the reorganization process, but at the same time, discourage mushrooming administrative expenses. Accordingly, the substantial contribution provisions must be narrowly construed, and do not change the basic rule that the attorney must look to his own client for payment." In re Granite Partners, 213 B.R. 440, 445 (Bankr. S.D.N.Y. 1997) (Citations omitted.). See also, In re 9085 East Mineral Office Building, Ltd., 119 B.R. 246, 250 (Bankr. D. Colo. 1990) (A primary goal of section 503(b) is "stimulating, encouraging, and promoting meaningful creditor participation in reorganization proceedings."); In re Hooker Investments, Inc., 188 B.R. 117, 120 (Bankr. S.D.N.Y. 1995), aff'd 104 F.3d 349 (2d Cir. 1996) (attorneys must generally look to their own clients for payment).

25. The Bankruptcy Code does not define "substantial contribution"; however, something more than active participation generally is required. See, 4 Collier on Bankruptcy, (15th Ed. 1998), ¶ 503.10[5][a], pp. 503-63 – 503-64. It is a question of fact whether a party has made a substantial contribution to the case. See, e.g., Mineral Office, supra, at 248. "The 'direct benefit' test used by courts for fee applications under the Bankruptcy Act's predecessor sections to 11 U.S.C. § 503(b)

. . .

"(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant . . . ."

Note that an order pursuant to section 503(b)(3)(D) is a prerequisite to an award of attorneys' fees and expenses pursuant to section 503(b)(4). In re American Preferred Prescriptions, Inc., 194 B.R. 721, 723-24 (Bankr. E.D.N.Y. 1996) (concluding that law firm did not have standing to apply for payment under section 503(b)(4) when its client had not applied for reimbursement under section 503(b)(3)(D)).

remains the touchstone in a 'substantial contribution' analysis. The appropriate test under Section 503(b) is whether the services substantially contributed to a successful result, that is, an actual and demonstrable benefit to the debtor's estate, the creditors and, to the extent relevant, the stockholder." In re Texaco, Inc., 90 B.R. 622, 630 (Bankr. S.D.N.Y. 1988). See also, In re Granite Partners, L.P., 213 B.R. 440 (Bankr. S.D.N.Y. 1997) (court determined that counsel for the Unofficial Investors' Committee made a substantial contribution to the case in rendering services related to confirmation of a plan of reorganization and facilitating liquidation of the Debtors); In re Nine and Associates, Inc., 76 B.R. 943 (Bankr. S.D.N.Y. 1987) (court affirmed an award of compensation to shareholders' counsel despite the fact that counsel's efforts conferred only a limited benefit upon the creditors).

26. There is no question that the involvement of Loomis Sayles and H&G directly benefitted the Holdings and Stores estate unsecured creditors. But for their involvement, and intervention, unsecured creditors at the Holdings estate would have received nothing under the Debtors' plan. This is made self-evident by the fact that the Debtors' Original Disclosure Statement and Plan provided for no recovery to the Holdings estate unsecured creditors. What is more, H&G was careful to avoid an unnecessary waste of fees or expenses, or duplication of effort, and wherever possible utilized the Committee's professionals and their work product to develop a distribution matrix and formulate a position for Holdings unsecured creditors.

ACTIVITY CATEGORIES

27. Virtually all of the services provided by H&G during the Application Period fall into one basic category: Plan and Disclosure Statement, as more fully described in paragraphs 14 to 20 above.

28. Section 12.05 of the Second Amended Plan provides as follows:

> Subject to the approval of the Bankruptcy Court on appropriate application as set forth in Section 12.07(b) hereof, the reasonable fees and expenses of Loomis Sayles during the course of these cases shall each be allowed as administrative expenses of the Debtors, pursuant to 11 U.S.C. § 503(b), not to exceed, in the aggregate, the amount of $300,000.

29. H&G's Fees and Expenses relating to the Application Period were rendered in connection with this case and in the discharge of H&G's professional responsibilities as attorneys for Loomis Sayles, and were necessary and substantial as described above.

30. H&G maintains written records of the time expended by attorneys, law clerks and legal assistants. Those time records are maintained contemporaneously with the rendition of services by each of H&G's attorneys, law clerks and legal assistants in the ordinary course of business.

31. Such records, copies of which are annexed hereto as Exhibit B, set forth in detail the services rendered on behalf of Loomis Sayles, the dates upon which such services were rendered, the nature of the services, the time spent and the identity of the attorney, law clerk or legal assistant who performed such services. A schedule setting forth (a) the number of hours expended by the individual attorneys, law clerks and legal assistants, (b) the year each attorney was licensed to practice, (c) the position of each attorney, law clerk or legal assistant within H&G, (d) the department to which each respective attorney or legal assistant belongs, (e) the standard hourly rate which H&G charges for the same or similar services of each attorney, law clerk or legal assistant in non-bankruptcy matters and (f) the total Fees attributable to services rendered by each attorney, law clerk or legal assistant is annexed hereto as Exhibit C.

32. H&G also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule of the categories of expenses and amounts for which reimbursement is sought, made from records maintained in the ordinary course of business, is annexed hereto as Exhibit D, together with the computer backup for such expenses.

WHEREFORE, Loomis Sayles respectfully requests that this Court award compensation for professional services rendered by H&G during the Application Period in the aggregate sum of $278,401.63, together with reimbursement of disbursements in the amount of $21,598.37; and for such other and further relief as this Court deems just and proper.

Dated: Hartford, Connecticut
March 12, 1999

Respectfully submitted,

LOOMIS SAYLES & COMPANY, L.P.
by its attorneys,
HEBB & GITLIN, A Professional Corporation

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