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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

JUL 30 2003

KENNETH S. GARDNER, CLERK  
PS REP. - KG

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: \_\_\_\_\_ )  
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KMART CORPORATION, et al., )  
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 )  
Debtors. )  
\_\_\_\_\_ )

Chapter 11  
Case No. 02-B02474  
(Jointly Administered)  
Judge Susan Pierson Sonderby

**FINAL APPLICATION OF DEWEY BALLANTINE LLP FOR  
SERVICES RENDERED AND REIMBURSEMENT OF EXPENSES  
FOR THE PERIOD MARCH 7, 2002 THROUGH MAY 6, 2003  
AS SPECIAL COUNSEL TO INDEPENDENT MEMBERS OF  
THE KMART BOARD OF DIRECTORS**

Dewey Ballantine LLP ("Dewey Ballantine") hereby submits this application (the "Application"), pursuant to section 363(b) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), Rule 2016 of the Federal Rules of Bankruptcy Procedure (each a "Bankruptcy Rule" and collectively, the "Bankruptcy Rules"), Local Rule of Bankruptcy Procedure 607 (the "Local Rules"), and the Order confirming the Plan (as defined below), dated April 22, 2003 (the "Confirmation Order"), (i) seeking final allowance of compensation and reimbursement of expenses for legal services rendered during the period of March 7, 2002 through and including May 6, 2003 (the "Final Fee Period")<sup>1</sup> as counsel to the independent members of the Board of Directors (the "Independent Directors Group") of Kmart Corporation ("Kmart") and (ii) requesting that the Court direct payment of the foregoing amount to

<sup>1</sup> In this Application, Dewey Ballantine has included fees for legal services rendered and expenses incurred subsequent to May 6, 2003, in connection with the preparation of Dewey Ballantine's monthly fee statements for April, May, and June and this Application.

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the extent not yet paid. In support of this Application, Dewey Ballantine respectfully represents as follows:

### BACKGROUND

1. On January 22, 2002 (the "Petition Date"), Kmart and thirty seven of its affiliates filed voluntary petitions in this Court for relief under Chapter 11 of the Bankruptcy Code. On the Petition Date, the Court entered an order for the joint administration of these cases. The Debtors continued in the operation of their businesses and in possession of their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.
2. On January 25, 2002, this Court entered an Administrative Order pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals (the "Administrative Order"). A copy of the Administrative Order is annexed hereto as Exhibit "A."
3. On January 31, 2002, the United States Trustee appointed an Official Unsecured Creditors' Committee (the "Creditors' Committee") and an Official Financial Institutions' Committee (the "FIC").
4. On June 14, 2002, the United States Trustee appointed an Official Committee of Equityholders (the "Equity Committee," and together with the Creditors' Committee and the FIC, the "Statutory Committees"). No trustee or examiner has been appointed.
5. On April 22, 2003, the Court entered an order (the "Confirmation Order") confirming the First Amended Joint Plan of Reorganization of Kmart Corporation and Its Affiliated Debtors and Debtors-In-Possession, dated February 25,

2003 (the "Plan"). The Effective Date (as defined in the Plan) of the Plan occurred on May 6, 2003. Under the Confirmation Order, the Administrative Claims Bar Date is June 20, 2003 and the Professional Claims Bar Date is July 31, 2003. Confirmation Order at §§ 7(a) and 7(b).

6. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157.

RETENTION OF DEWEY BALLANTINE

7. On August 9, 2002, the Debtors submitted a motion requesting that this Court enter an order pursuant to section 363(b) of the Bankruptcy Code approving the Debtors' post-petition agreement to utilize estate funds outside the ordinary course of business to pay fees (the "Fees") and expenses and disbursements (collectively, the "Expenses") of Dewey Ballantine as special counsel to the Independent Directors Group, subject to the agreement entered into by the Debtors, Dewey Ballantine, and the Statutory Committees (the "Retention Motion"). The statements contained in the Retention Motion in support of the relief requested therein are hereby incorporated by reference into this Application in support of the relief requested herein. A copy of the Retention Motion, which is voluminous, can be found on this Court's docket at #5365.

8. On August 29, 2002, the Court entered an order (the "Dewey Retention Order") authorizing the Debtors to use estate funds pursuant to section 363(b) of the Bankruptcy Code to pay Dewey Ballantine "from and after the petition date as Special Counsel to represent the Independent Directors Group in connection with these

Chapter 11 cases . . . ." Dewey Retention Order at ¶1. A copy of the Dewey Retention Order is annexed hereto as Exhibit "B."

9. The Dewey Retention Order provides that all compensation and reimbursement of expenses to be paid to Dewey Ballantine from the Debtors' estates shall not exceed \$750,000, unless the Statutory Committees consent in writing or, alternatively, the Court enters an order permitting further payment. Dewey Retention Order at ¶ 3.

10. Pursuant to the Dewey Retention Order, Dewey Ballantine is subject to the protocols of the Joint Fee Review Committee. Dewey Retention Order at ¶ 2. These protocols require advance approval of proposed budgets and an opportunity for members of the Joint Fee Review Committee to object to actual fees and expenses incurred by any professional subject to these protocols. Accordingly, Dewey Ballantine submitted a budget to the Joint Fee Review Committee for review. Dewey Ballantine also submitted monthly fee statements to the Joint Fee Review Committee for review. Dewey Ballantine filed two Interim Fee Applications with the Court seeking approval of fees and expenses for certain interim periods. These Interim Fee Applications can be found on this Court's docket at #6848 and #9289. To date, no objections have been made to Dewey Ballantine's requests for fees and reimbursements.

#### FEES AND EXPENSES INCURRED

11. Through the Final Fee Period, Dewey Ballantine has incurred \$1,055,573.00 in Fees. In the course of this representation, Dewey Ballantine has voluntarily discounted all of its Fees by 15% pursuant to its agreement with the Debtors, amounting to a total reduction of \$158,335.95 and a net amount of \$897,237.05 in Fees.

A chart detailing the breakdown of Dewey Ballantine's Fees and Expenses is attached as Exhibit "C." Attached as Exhibit "D" is a schedule that shows a summary of the hours worked, the hourly billing rates and the total charges of each Dewey Ballantine professional and paraprofessional performing services in this matter. Attached as Exhibit "E" is a copy of the actual time records maintained by Dewey Ballantine for the Final Fee Period.

12. As detailed below, Dewey Ballantine has incurred \$55,362.08 in Expenses.<sup>2</sup> Attached as Exhibit "F" is a schedule, prepared from documents maintained by Dewey Ballantine's billing department with respect to Dewey Ballantine's Expenses, setting forth the amounts and types of Expenses incurred during the Final Fee Period. Attached as Exhibit "G" is a copy of the actual expense record maintained by Dewey Ballantine for the Final Fee Period, which reflects total Expenses in the amount of \$58,946.48. Due to the constraints of Dewey Ballantine's billing system, faxes sent during the months of March 2002 through December 2002 appear within Exhibit G, and copy charges appear in Exhibit G at both .10 and .20 per page from March 2002 through December 2002. In its efforts to insure that its total Expenses reflect charges of .10 per page for copies and no charges for faxes, in compliance with Standing Order No. 8 of this Court dated April 6, 2000 (the "Standing Order"), Dewey Ballantine has reduced its total Expenses from \$58,946.48 in the amount of \$3,584.40, which reflects and eliminates all telephone and fax charges from March 2002 through December 2002, and reduces copy charges for this time period by 50%, reflecting a .10 per page charge. Accordingly,

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<sup>2</sup> The Expenses listed herein reflect Expenses incurred by Dewey Ballantine during the Final Fee Period. The actual amount of Expenses are likely to be higher based upon additional Expenses that were incurred during the Final Fee Period but not billed to Dewey Ballantine during such period.

Dewey Ballantine is only seeking \$55,362.08 in Expenses for the Final Fee Period. See Exhibits C and F.

13. In its First Interim Fee Application, for the period of March 7, 2002 through August 31, 2002 (the "First Interim Period"), Dewey Ballantine requested \$316,386.79 (net of 15% discount) in Fees and \$17,211.17 in Expenses, in the total amount of \$332,383.70. See Exhibit C. As stated above, in order to insure compliance with the Standing Order, Dewey Ballantine has reduced the Expenses originally sought during the First Interim Period by \$1,224.26 and is only seeking \$15,996.91 in Expenses for the First Interim Period. See Exhibit C.

14. In its Second Interim Fee Application, for the period of September 1, 2002 through December 31, 2002 (the "Second Interim Period"), Dewey Ballantine requested \$290,024.04 (net of 15% discount) in Fees and \$15,210.50 in Expenses, in the total amount of \$305,234.54. See Exhibit C. In order to insure compliance with the Standing Order, Dewey Ballantine has reduced the Expenses originally sought during the Second Interim Period by \$2,360.14 and is only seeking \$12,850.36 in Expenses for the Second Interim Period. See Exhibit C.

15. Dewey Ballantine submitted a monthly fee statement for the month of January 2003 to the Joint Fee Review Committee requesting \$92,793.65 (net of 15% discount) in Fees and \$5,448.84 in Expenses for that month, in the total amount of \$98,242.49. See Exhibit C.

16. For the month of February 2003, Dewey Ballantine incurred \$130,186.00 (net of 15% discount) in Fees and \$10,183.48 in Expenses. See Exhibit C. Dewey Ballantine submitted an invoice to the Joint Fee Review Committee for that

month. Recognizing that the cumulative Fees and Expenses incurred by Dewey Ballantine as of February 2003 exceed the maximum amount approved by the Court in the Dewey Retention Order, Dewey Ballantine requests payment for February 2003 in the net amount of \$6,315.93 in Fees and \$10,183.48 in Expenses, the remainder available under the fee cap, in the total amount of \$16,499.41.

17. For the month of March 2003, Dewey Ballantine incurred \$32,688.87 (net of 15% discount) in Fees and \$7,611.60 in Expenses. See Exhibit C. Dewey Ballantine submitted an invoice to the Joint Fee Review Committee for that month, to be in compliance with the protocols of the Joint Fee Review Committee. Recognizing that the cumulative Fees and Expenses incurred by Dewey Ballantine prior to the month of March exceed the maximum amount approved by the Court in Dewey Ballantine's Retention Order, Dewey Ballantine is not requesting payment for Fees and Expenses incurred during the month of March 2003.

18. For the month of April 2003, Dewey Ballantine incurred \$23,746.45 (net of 15% discount) in Fees and \$2,183.66 in Expenses. See Exhibit C. Dewey Ballantine submitted an invoice to the Joint Fee Review Committee for that month, to be in compliance with the protocols of the Joint Fee Review Committee. Recognizing that the cumulative Fees and Expenses incurred by Dewey Ballantine prior to the month of March exceed the maximum amount approved by the Court in Dewey Ballantine's Retention Order, Dewey Ballantine is not requesting payment for Fees and Expenses incurred during the month of April 2003.

19. For the months of May and June 2003, Dewey Ballantine incurred \$11,411.25 (net of 15% discount) in Fees and \$1,087.23 in Expenses. See Exhibit C.

Recognizing that the cumulative Fees and Expenses incurred by Dewey Ballantine prior to this time period exceed the maximum amount approved by the Court in Dewey Ballantine's Retention Order, Dewey Ballantine is not requesting payment for Fees and Expenses incurred during the months of May and June 2003.

RELIEF REQUESTED

20. Dewey Ballantine submits this Application in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules (i) seeking allowance of final compensation for the professional services rendered as special counsel to the Independent Directors Group and reimbursement of expenses and disbursements incurred during the Final Fee Period and (ii) requesting that the Court direct payment of the foregoing amount to the extent not yet paid.

21. All of the professional services for which compensation is being sought were rendered solely on behalf of the Independent Directors Group and not on behalf of any of the Statutory Committees, creditor or other party.<sup>3</sup> Moreover, Dewey Ballantine is not seeking payment for providing professional services to any member of the Independent Directors Group (i) in connection with claims made or actions asserted by or on behalf of the Debtors or the Statutory Committees or (ii) in connection with matters in which such members hold an interest adverse to the Debtors.

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<sup>3</sup> At the time that the Dewey Retention Order was entered, James B. Adamson was both Chairman of the Board of Directors and Chief Executive Officer of Kmart. On January 19, 2003, Mr. Adamson resigned as Chief Executive Officer but remained an outside director and Chairman of the Board of Directors until the effective date of Kmart's Plan of Reorganization. At the request of both Kmart and Mr. Adamson (and with the consent of the members of the Independent Directors Group), Dewey Ballantine has provided legal services to Mr. Adamson since he became an outside director on January 19, 2003 and requests approval for fees and expenses associated with that representation as well. Those Fees and Expenses are included within the totals for services rendered to the Independent Directors Group set forth herein.



22. Dewey Ballantine respectfully submits that the professional services which it has rendered and the expenses that it has incurred on behalf of the members of the Independent Directors Group were necessary and benefited the Independent Directors Group. Set forth below is a summary of the legal services provided by Dewey Ballantine to the Independent Directors Group during the Final Fee Period. Based upon an analysis of the summary below and other relevant factors, Dewey Ballantine respectfully submits that the compensation sought in this Application is reasonable.

I. Final Fee Application for Dewey Ballantine, as Special Counsel to the Independent Directors Group.

23. Dewey Ballantine has maintained detailed records of the time expended in rendering the professional services performed on behalf of the Independent Directors Group in these Chapter 11 cases. Such time records were generated contemporaneously with the performance of the professional services described therein and in the ordinary course of Dewey Ballantine's practice. The individual time records were recorded by the attorney, law clerk or legal assistant who rendered the particular services described. See Exhibit D and E. Dewey Ballantine's records reflect that, during the Final Fee Period, attorneys, law clerks and legal assistants rendered an aggregate of 2,665.60 hours of professional services. These professional services represent a total charge of \$1,055,573.00 in Fees. Pursuant to an agreement between Dewey Ballantine and the Debtor, Dewey Ballantine has voluntarily reduced its fees by 15%, amounting to a reduction of \$158,335.95 for the Final Fee Period, and a net total charge of \$897,237.05 in Fees.

24. Dewey Ballantine also maintains records of all Expenses incurred by Dewey Ballantine in connection with the performance of its services. As stated above, the amount of Expenses incurred by Dewey Ballantine on behalf of the Debtors during the Final Fee Period for which Dewey Ballantine is seeking reimbursement is \$55,362.08 as reflected on Exhibit F. See, supra, ¶ 12.

II. The Fee Cap.

25. Based upon an estimate of the services Dewey Ballantine proposed to provide to the Independent Directors Group at the inception of the retention, the maximum allowable compensation was set by the Court at \$750,000. As more fully set forth below, Dewey Ballantine's role as special counsel to the Independent Directors Group has required a greater commitment of time and resources than originally envisioned. This was largely attributable to the scope of investigations that were conducted by the Debtors and the Statutory Committees, the United States Securities and Exchange Commission (the "SEC"), the United States Attorney's Office for the Eastern District of Michigan, and a Subcommittee of the United States House of Representatives, which were significantly larger and more intensive than anticipated. To facilitate these investigations specifically and the reorganization process generally, Dewey Ballantine responded promptly to requests from each of these entities without insisting on first filing a motion to increase the \$750,000 fee cap. The addition of Mr. Adamson to the Independent Directors Group, described in footnote four above, also resulted in additional Fees and Expenses. Although there were considerable efficiencies in including Mr. Adamson as part of this group representation, resulting in significantly less expense

for the estate than if Mr. Adamson were to have been provided with individual counsel, those incremental Fees and Expenses were not originally anticipated.

26. Dewey Ballantine has rendered various extensive and valuable professional services to the Independent Directors Group, which services have been demanding of time, effort, and expertise. Therefore, Dewey Ballantine respectfully submits that the quality of professional services rendered, the results obtained and the nature of these cases warrant the allowance of Dewey Ballantine's request for compensation for legal services and reimbursement of Expenses for the Final Fee Period.

27. Indeed, although the Dewey Retention Order establishes a \$750,000 cap on Dewey Ballantine's Fees and Expenses, the Order permits Dewey Ballantine to receive additional compensation if "the Court enters an order permitting such further payments." Dewey Retention Order at ¶3. Dewey Ballantine believes that the value of its services and the other circumstances described herein would have amply supported an application to eliminate the cap and that the total amount of its net Fees and Expenses, \$952,599.13, would be fair and reasonable compensation for the services rendered. Nonetheless, in recognition of the Debtors' limited funds and as a voluntary accommodation to Kmart, Dewey Ballantine has elected to forego its right to apply for an increase in the cap and is limiting this Application for Fees and Expenses to \$750,000. In doing so, Dewey Ballantine is "writing off" \$202,599.13, or approximately 21.3% of its total Fees and Expenses in these matters.<sup>4</sup>

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<sup>4</sup> This write off is in addition to the 15% discount on Fees already incorporated into Dewey Ballantine's bills.

III. Legal Services Rendered By Dewey Ballantine.

28. During the Final Fee Period, Dewey Ballantine rendered professional legal advice to the Independent Directors Group. In general, Dewey Ballantine has provided the following kinds of services to the Independent Directors Group throughout its representation.

A. Fiduciary Duties of the Independent Directors Group.

29. Dewey Ballantine advised the Independent Directors Group on their fiduciary duties during the pendency of these cases. In connection with this service, Dewey Ballantine reviewed developments in these cases and advised the Independent Directors Group in connection with their duties during the pendency of these Chapter 11 cases. In addition, Dewey Ballantine professionals reviewed the Debtors' SEC and Chapter 11 filings and provided independent advice on certain of those filings to the Independent Directors Group, and also provided the full range of professional services and advice normally associated with such representation.

B. Director and Officer Insurance Policy.

30. Dewey Ballantine reviewed and analyzed the director and officer liability insurance policies and addressed legal issues related thereto. Dewey Ballantine has provided the Independent Directors Group with an analysis of their existing liability coverage, including the availability and extent of coverage for the Audit Committee for the performance of its ongoing responsibilities.

C. Attendance at Meetings of the Board and Committees Thereof.

31. Dewey Ballantine prepared for and participated in numerous meetings of the Kmart Board of Directors and committees thereof, including the Audit

Committee and the Compensation Committee, from March 2002 through May 6, 2003. Because of a number of unforeseen issues arising out of and relating to the investigations described above, the frequency of these meetings significantly exceeded original expectations.

D. Audit Committee.

32. Dewey Ballantine examined, and advised the Audit Committee regarding, anonymous letters sent variously to the directors, Kmart executives, Congress, the SEC, Kmart's auditors, and Kmart's legal counsel expressing concerns over various matters. Dewey Ballantine advised the Audit Committee regarding both the Audit Committee's supervision of the internal investigation in response to the allegations in these letters, and the external investigation that is currently pending with the SEC and the United States Attorney's Office. During the course of Dewey Ballantine's representation, the Debtors received more than 65 such letters, a volume and frequency of complaints that is virtually unprecedented and that required a significantly greater amount of attention than anticipated.

E. Kmart's Disclosure Documents.

33. Dewey Ballantine advised the Independent Directors Group in connection with the directors' review of the Debtors' disclosure documents, including relevant SEC filings and press releases. Pursuant to this role, Dewey Ballantine reviewed and advised the Independent Directors Group in connection with the Debtors' Form 10-K and 10-Q filings.

34. Dewey Ballantine worked closely with the Independent Directors Group in connection with these SEC filings, (a) spending significant amounts of time

reviewing, analyzing, commenting upon and advising the Independent Directors Group with respect to these filings; and (b) participating in various meetings and conference calls regarding these filings. The extent and complexity of the required financial restatements and mandatory filings was not anticipated at the time the Dewey Retention Order was entered.

F. Congressional Hearings.

35. In July 2002 the Subcommittee on Oversight and Investigation of the United States House Energy and Commerce Committee requested that numerous public companies, including Kmart, provide documentation regarding certain matters. The Committee also requested documents from members of the Independent Directors Group and asked to interview certain members of the Independent Directors Group. Dewey Ballantine advised the Independent Directors Group in regard to those requests.

G. Rule 2004 Depositions.

36. At the request of the Independent Directors Group, Dewey Ballantine spent a significant amount of time preparing for and defending depositions of members of the Independent Directors Group taken by the Statutory Committees, pursuant to Bankruptcy Rule 2004, including preparation for numerous depositions that the Statutory Committees originally requested but ultimately did not take.

H. Preparation of Employment/Allowance Applications.

37. Dewey Ballantine assisted in preparation of its retention applications that were filed by the Debtors. This category includes time spent by Dewey Ballantine in reviewing and responding to objections regarding its retention. Attorneys

also studied Dewey Ballantine's records to determine connections to relevant parties, and disclosed those connections.

38. Dewey Ballantine prepared a submission for the Fee Review Committee outlining the proposed budget and submitted Monthly Fee Statements to the Joint Fee Review Committee. In addition, Dewey Ballantine spent time preparing the Interim Fee Applications, categorizing activities in the appropriate matter codes, preparing the time and expense details, and negotiating various matters relating to this Application.

#### ALLOWANCE OF EXPENSES AND DISBURSEMENTS

39. Although Dewey Ballantine was not retained under section 327 of the Bankruptcy Code, Dewey Ballantine submits that its Fees meet the standards of reasonableness applicable to sections 330 of the Bankruptcy Code. Section 330(a) of the Bankruptcy Code provides for the compensation of reasonable and necessary services rendered by professionals based upon the time, nature, extent and value of the services rendered, as well as the cost of comparable services in non-bankruptcy cases. See generally In re Geraci, 138 F.3d 314 (7th Cir. 1998); Matter of Taxman Clothing Company, 49 F.3d 310 (7th Cir. 1995).

40. Bankruptcy Courts reviewing fee applications use several different approaches to apply these guidelines, including the approach enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). See generally In re Geraci, 138 F.3d 314 (7th Cir. 1998); In re Spanjer Brothers, Inc., 203 B.R. 85 (Bankr. N.D.Ill. 1996). Bankruptcy Courts also frequently utilize the lodestar analysis, analyzing the benefit of the services to the estate and considering whether the services rendered

were reasonable and necessary. See Matter of Taxman Clothing Company, 49 F.3d 310, 315 (7th Cir. 1995); In re UNR Industries, Inc., 986 F.2d 208 (7th Cir. 1993).

41. These analyses examine similar factors, including: (i) the novelty or difficulty of the questions, (ii) the experience, reputation and skill of the professional, (iii) time limitations imposed by the circumstances, (iv) whether the fee is fixed or contingent, (v) the preclusion of other employment by the professional due to acceptance of the case, and (vi) the amount involved and the results obtained or the quality of the services. See Matter of Taxman Clothing Company, 49 F.3d 310, 315 (7th Cir. 1995); In re Spanjer Brothers, Inc., 203 B.R. 85 (Bankr. N.D.Ill. 1996).

A. Nature, Complexity and Duration of Cases.

42. Kmart's Chapter 11 reorganization presented a unique set of circumstances and the Chapter 11 cases are among the most complex cases ever filed. Throughout this process, Kmart (and the Independent Directors Group, in particular) confronted numerous novel and complex corporate governance issues. In light of these issues, and given the size of these cases and the number of matters that must be addressed, Dewey Ballantine's position as special counsel to the Independent Directors Group provided a substantial benefit to the Independent Directors Group, which in turn provided a substantial benefit to the Debtors.

43. In staffing this matter, in budgeting and incurring charges and disbursements, and in preparing and submitting this Application, Dewey Ballantine has been mindful of the need to be efficient while providing full and vigorous representation to the Independent Directors Group. Dewey Ballantine has also been cognizant of the standards established by this Court for compensation of professionals and reimbursement



of charges and disbursements. See In re Adventist Living Centers, Inc., 137 B.R. 701 (Bankr. N.D. Ill. 1991); In re Convent Guardian Corp., 103 B.R. 937 (Bankr. N.D. Ill. 1989). As described, Dewey Ballantine believes that the requests made in this Application comply with this Court's standards in the context of the unique circumstances surrounding this unusually complex case.

B. Experience of Dewey Ballantine.

44. When considering the reasonableness of a law firm's hourly fee rate, an important factor to be considered is the experience, reputation, and ability of the attorneys. Dewey Ballantine (including its predecessors) has engaged in the practice of law for more than ninety years during which time it developed considerable experience and earned a substantial reputation in numerous practice areas, including corporate governance, internal investigations, litigation, corporate, tax, securities law and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code. Many of these practice areas are relevant to Dewey Ballantine's role as Special Counsel to the Independent Directors Group. Additionally, Dewey Ballantine has previously acted as special counsel and conducted extensive reviews and analyses of debtors' affairs and operations in other bankruptcy cases.

C. Time Limitations Imposed by the Circumstances.

45. Dewey Ballantine was frequently required to, and did, provide legal services on short notice and within expedited time frames at the request of the Independent Directors Group and, in many instances, at the specific request of the Debtors, as well, through their separate counsel. Examples include instances of providing advice at or in connection with board meetings, providing advice regarding anonymous letters,

reviewing and commenting on proposed filings, assisting the Audit Committee in monitoring and responding to developments in its internal investigation and in the external investigations of Kmart, and preparing for and participating in interviews and Rule 2004 examinations.

D. Comparable Services.

46. As this Court has pointed out, an award of compensation also must be based on the cost of comparable services other than in a bankruptcy case. See In re Adventist Living Centers, Inc., 137 B.R. 701, 704 (Bankr. N.D.Ill. 1991). Dewey Ballantine's rates are consistent with rates charged to other clients in non-bankruptcy matters; in fact, Dewey Ballantine, by agreement with the Debtors, voluntarily agreed at the outset of the Cases to discount its fees by 15%. By this Application, Dewey Ballantine seeks its customary fee for similar matters at rates which are comparable to those charged by law firms of a similar size and expertise in Dewey Ballantine's relevant market less the discount. Finally, because of Dewey Ballantine's decision to "write off" an additional \$202,599.13, or approximately 21.3%, of its Fees and Expenses, and to forego an application to lift the fee cap, the requested total fee of \$750,000 is well below comparable fees.

E. Results Obtained and Quality of the Services.

47. Under the guidance of its Board of Directors, Kmart successfully confirmed a plan of reorganization and emerged from bankruptcy on May 6, 2003, a remarkably expedited result in light of the size and complexity of these proceedings and the difficult business and regulatory challenges, and the extensive management turnover that Kmart faced during this period. Clearly, the lion's share of the credit for this result

goes to Kmart's management and directors and to Debtors' counsel, Skadden, Arps, Slate, Meagher, and Flom. Nonetheless, Dewey Ballantine respectfully submits that its representation of the Independent Directors Group (a group that, together with Mr. Adamson, eventually constituted the full Board of Directors of Kmart) significantly assisted the Kmart Board of Directors in guiding Kmart to this result. Accordingly, Dewey Ballantine submits that it has provided quality representation and achieved successful results.

#### COMPLIANCE WITH GUIDELINES

48. Dewey Ballantine believes that this Application, together with the attachments hereto, substantially complies in all material respects with the Local Guidelines and the Dewey Order. Dewey Ballantine also believes that this Application complies with the detailed standards established by this Court in In re Adventist Living Centers, Inc., 137 B.R. 701, 704 (Bankr. N.D. Ill. 1991) and In re Convent Guardian Corp., 103 B.R. 937 (Bankr. N.D. Ill. 1989). To the extent this Application does not comply in every respect with the requirements of such guidelines, Dewey Ballantine respectfully requests a waiver for any such technical non-compliance.

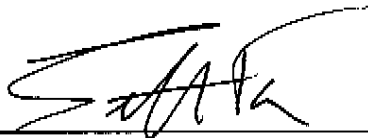
## NOTICE

49. Notice of this Application has been given to: (i) the Debtors at Kmart Corporation, 3100 West Big Beaver Road, Troy, MI 48084-3163 (Attn: General Counsel); (ii) counsel to the Debtors, Skadden, Arps, Slate, Meagher & Flom (Illinois), 333 West Wacker Drive, Suite 2100, Chicago, Illinois 60606 (Attn: John Wm. Butler, Jr.); (iii) counsel to the Creditors' Committee, Otterbourg, Steindler, Houston & Roscn, P.C., 230 Park Avenue, New York, New York 10169 (Attn: Glenn B. Rice and Scott L. Hazan); (iv) counsel to the FIC, Jones, Day, Reavis & Pogue, 901 Lakeside Avenue, Cleveland, Ohio 44144-1190 (Attn: Richard M. Cieri) and Jones, Day, Reavis & Pogue, 77 West Wacker Drive, Chicago, Illinois 60601-1692 (Attn: Paul E. Harner); (v) counsel to the Equity Committee, Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Lrd., 55 East Monroe Street, Suite 3700, Chicago, Illinois 60603 (Attn: Randall L. Klein); (vi) counsel to the Plan Investors, Wachtell, Lipton, Rosen & Katz, 51 West 52<sup>nd</sup> Street, New York, New York 10019 (Attn: Scott K. Charles) and Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153 (Attn: Eric L. Schondorf); (vii) counsel to the administrative agents for Debtors' postpetition lenders, Morgan Lewis & Bockius, 101 Park Avenue, New York, New York 10178 (Attn: Robert H. Scheibe and Jay Teitelbaum) and Katten Muchin Zavis, 525 West Monroe Street, Suite 1600, Chicago, Illinois 60661 (Attn: Jeff Marwil and Brian Swett); and (viii) the United States Trustee, U.S. Trustee, Region 11, Northern District of Illinois, 227 West Monroe Street, Suite 3350, Chicago, Illinois 60606.

WHEREFORE, Dewey Ballantine respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit "H" (a) allowing final compensation to Dewey Ballantine for professional services rendered as counsel for the Independent Directors Group, plus reimbursement of actual and necessary charges and disbursements incurred, for a total amount of \$750,000 in Fees and Expenses and (b) directing payment of the foregoing amount to the extent not yet paid.

Dated: New York, New York  
July ~~13~~<sup>17</sup>, 2003

DEWEY BALLANTINE LLP

By:   
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