

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

JAN 15 2004

KENNETH S. GARDNER, CLERK
PS REP. - KG

In re:) Case No. **02 B 02474**
) (Jointly Administered)
) Chapter 11
KMART CORPORATION, et al.)
) Hon. Susan Pierson Sonderby
)
Debtors.) HEARING DATE: **January 27, 2004**
) Time: **2:00 p.m.**
) Objection Deadline: **January 23, 2004**

**THE KMART CORPORATION JOINT FEE
REVIEW COMMITTEE REPORT REGARDING
CERTAIN FINAL FEE APPLICATIONS**

The Kmart Corporation Joint Fee Review Committee (the "Committee") established in the above-captioned cases of Kmart Corporation and certain of its subsidiaries and affiliates (collectively, "Kmart"), hereby submits this report (the "Fee Report") with respect to the Final Fee Applications (the "Applications") filed by those certain professionals (the "Professionals") and the request for reimbursement of expenses by certain committee members (the "Committee Members") listed on the Notice of Hearing on Final Fee Applications, which Notice is attached hereto as *Exhibit A*.

1. On March 20, 2002, this Court entered an Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing a Joint Fee Review Committee (the "Joint Fee Review Order"). In accordance with the Joint Fee Review Order, there are five (5) voting members of the Committee: (i) Ira Bodenstein, the United States Trustee for the Northern District of Illinois; (ii) William Crowley, the Representative of the Financial

Institutions Committee; (iii) Gary Shapiro, the representative of the Official Unsecured Creditors Committee; (iv) James E. Defebaugh, Kmart's representative; and (v) Tom Zielecki, Kmart's representative. On June 3, 2003, the Court entered an Order Under 11 U.S.C. §327(a) Authorizing the Employment and Retention of Stuart, Maue, Mitchell & James, Ltd. ("Stuart Maue") as the Fee Examiner in these cases (the "Stuart Maue Retention Order").

2. The Committee, in consultation with Stuart Maue, developed the Kmart Billing and Expense Guidelines (hereinafter referred to as the "Expense Guidelines", and, collectively, the "Guidelines") to assist the Committee in reviewing the compensation and expense reimbursement requests. A copy of the Guidelines is attached hereto as *Exhibit B*. The Committee believes that these Guidelines are consistent with case law, as well as local rules.

3. The Committee directed Stuart Maue to review the Applications filed by Professionals requesting reimbursement of fees on an hourly basis for compliance with these Guidelines. Stuart Maue did not review the Applications filed by Professionals requesting reimbursement of fees on a flat fee basis. Stuart Maue submitted all reports to the Committee by September 15, 2003.^{1/} On September 22, 2003, the Committee met in Chicago to discuss the reports. At this meeting, each Professional's report was discussed, areas of concern were identified as well as any further information required by the Committee. By letters dated as of October 6, 2003, the Committee advised the Professionals of its concerns regarding their Applications, and, further, requested that each Professional submit an expense affidavit, which affidavit attested to the firm's compliance with the Expense Guidelines (the "Expense Affidavit"). The Professionals

^{1/}

On November 30, 2003, Stuart Maue also submitted these reports to the Court.

were also given the opportunity to obtain the complete Stuart Maue report, including exhibits, for their Application.

4. On November 17, 2003, the Committee met with each hourly rate Professional to discuss the Stuart Maue report, their responses to the October 6, 2003 letter, as well as the Expense Affidavits. There were also various additional discussions and meetings between the Professionals and the Committee. As a result of these meetings, the Committee reached a number of settlements, which settlements were approved by this Court on December 17, 2003. Since that date, the Committee has reached the following additional settlements:^{2/}

A. **Winston & Strawn ("Winston")**

Winston is requesting \$2,373,287.85 in fees and \$257,057.52 in expenses. Winston submitted an Expense Affidavit to the Committee attesting to its compliance with the Expense Guidelines except for \$3,850.34 for working meals, \$1,102.48 for out-of-town lodging which exceeded the rate presumed reasonable in the Guidelines, and \$199.82 for business meals. The Stuart Maue report indicates there is significant time expense incurred for vaguely described tasks, lumped entries, multiple attendance, potential duplication of effort and the stewardship investigation. The Committee recommends that Winston's fees be reduced by \$204,764.80 and its expenses be reduced by \$5,152.64 as an appropriate

^{2/}

The agreements between the Committee and the Professionals which are recommended to the Court in this Fee Report are in settlement of all issues regarding the Applications, subject to final approval by this Court. The Professionals reserve the right to request payment of all fees and expenses in the event that the Applications, as modified by this Report, are not approved by this Court. In such event, these settlements become null and void.

compromise of all issues regarding Winston's fees and expenses. Winston has agreed to these reductions. Accordingly, the Committee respectfully recommends to the Court that Winston be awarded final compensation in the amount of \$2,168,523.02 and expenses in the amount of \$251,904.88.

B. Saybrook Capital LLC ("Saybrook")

Saybrook is requesting \$1,192,258.06 in fees and \$93,504.88 in expenses. Saybrook submitted an Expense Affidavit attesting to its compliance with the Expense Guidelines except for \$5,000.00 for certain expenses. Saybrook's compensation for services included a monthly financial advisory fee of \$150,000.00, which was payable beginning July 1, 2002, through January 17, 2003 and a one-time \$150,000.00 due diligence fee. As Saybrook was a flat fee Professional, Stuart Mauc did not review its Application. The Committee, however, has reviewed the Saybrook Application for reasonableness. The Committee recommends that Saybrook's fees be reduced by \$47,690.00 and its expenses be reduced by \$5,000.00 as an appropriate compromise of all issues regarding Saybrook's fees and expenses. Saybrook has agreed to these reductions. Accordingly, the Committee respectfully recommends to the Court that Saybrook be awarded final compensation in the amount of \$1,144,568.06 and expenses in the amount of \$88,504.88.

5. The Committee also reviewed the expense requests of the Committee Members. The Unsecured Creditors' Committee Members are requesting \$172,247.00 in expenses and the Official Equity Committee Members are requesting \$75,195.97 in expenses. These Members volunteered their time and expertise to assist in these cases and their service on the committees is appreciated. The Committee notes that there are certain discrepancies in the expense requests from the Expense Guidelines. However, the

Committee finds them to be de minimis. Accordingly, the Committee respectfully recommends to the Court that the Unsecured Creditors' Committee's expense request of \$172,247.00 and the Official Equity Committee's expense request of \$75,195.97 be awarded in full.

6. As of the date of the filing of this report, the Committee has not resolved its concerns regarding the PriceWaterhouseCoopers LLP and the Rockwood Gemini Advisors Applications. At the January 27, 2004 Hearing on the Applications, the Committee will advise the Court of the status of any settlement discussions, and, if appropriate, will request a briefing schedule on the filing of objections to these remaining Applications.

7. Attached hereto as *Exhibit C* is a chart setting forth the recommendations of the Committee. After considering a draft of this Fee Report, the Committee adopted this Fee Report and the recommendations contained herein.

DATED: Chicago, Illinois
1115, 2004

RESPECTFULLY SUBMITTED:



IRA BODENSTEIN
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IN THE UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF ILLINOIS
 EASTERN DIVISION

In re:) Chapter 11-6 PA 4:30
)
 KMART CORPORATION, et al.,) Case No. 02 B 02474
) (Jointly Administered)
 Debtors.)
) Honorable Susan Picson Sonderby
)
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) **Hearing Date: January 27, 2004**
) **Hearing Time: 2:00 p.m.**
) **Objection Deadline: January 23, 2004**

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF ILLINOIS
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NOTICE OF HEARING ON FINAL FEE APPLICATIONS

PLEASE TAKE NOTICE that on **January 27, 2004 at 2:00 p.m.**, in the courtroom of the Honorable Susan Picson Sonderby, United States Bankruptcy Judge, Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, Courtroom 642 ("the Bankruptcy Court"), or as soon thereafter as counsel may be heard, a hearing will be held to consider the Final Fee Applications (the "Applications") for allowance of compensation and reimbursement of expenses filed by certain professionals retained in the above-captioned cases, and reimbursement of expenses by certain committee members, as set forth below:

<u>Application and Nature of Representation</u>	<u>Final Sums Requested</u>
Final Application of the Members of the Official Committee of Unsecured Creditors for Reimbursement of Expenses (Docket No. 15708) Filed by OTTERBOURG, STEINDLER, HOUSTON, & ROSEN, P.C.	Expenses: \$172,247.00
WINSTON & STRAWN Attorneys for the Official Committee of Unsecured Creditors (Docket No. 15709)	Fees: \$2,373,287.85 Expenses: \$257,057.52
SAYBROOK CAPITAL LLC Financial Advisors to the Official Committee of Equity Security Holders (Docket No. 15696)	Fees: \$1,192,258.06 Expenses: \$93,504.88
Final Application of the Official Committee of Equity Security Holders for Reimbursement of Expenses Incurred by Members of the Official Committee of Security Holders (Docket No. 15693) Filed by GOLDBERG, KOHN, BELL, BLACK, ROSENBLOOM & MORITZ, LTD.	Expenses: \$75,195.97

PRICEWATERHOUSECOOPERS LLP
Financial Advisors for Kmart Corporation (Docket No. 15717)

Fees: \$11,984,452.80
Expenses: \$1,131,957.45

ROCKWOOD GEMINI ADVISORS
Real Estate Advisor to the Debtors (Docket No. 15811)

Fees: \$2,851,571.25
Expenses: \$517,288.58

PLEASE TAKE FURTHER NOTICE that copies of the Applications and all pleadings and orders of the Bankruptcy Court are publicly available, along with the docket and other case and court information, at the Bankruptcy Court's general website address:
<http://www.ilnb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that the Joint Fee Review Committee's report will be filed on or before January 16, 2003. This report is available upon request from the undersigned counsel for Kmart Corporation, or available for review at the following websites:
<http://www.ilnb.uscourts.gov> and <http://www.trumbullgroup.com/kmart/index.htm>.

PLEASE TAKE FURTHER NOTICE that any party in interest objecting to the Applications shall file objections no later than **January 23, 2004**. Objections must be submitted in writing to the Everett McKinley Dirksen Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. A copy of any objection must be submitted directly to the chambers of the Honorable Susan Pierson Sonderby and served so as to be received by 4:00 p.m. Central Standard time on such date by: (i) the undersigned counsel for Kmart Corporation, Attn.: William J. Barrett; (ii) counsel for the Official Committee of Unsecured Creditors, Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, 29th Floor, New York, New York 10169 (Attn: Glenn B. Rice, Esq.) and Winston & Strawn, 35 West Wacker Drive, 40th Floor, Chicago, Illinois 60601 (Attn: Matthew Botica, Esq.); (iii) counsel for the Official Committee of Financial Institutions, Jones, Day, Reavis & Pogue, 77 West Wacker Drive, Chicago, Illinois 60601 (Attn: Paul E. Harner, Esq.); (iv) counsel for the Official Committee of Equity Holders, Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd., 55 East Monroe Street, Suite 3700, Chicago, Illinois 60603 (Attn: Randall L. Klein, Esq.); and (v) the Office of the United States Trustee, 227 West Monroe, Suite 3350, Chicago, Illinois 60606 (Attn: Kathryn Gleason, Esq.). Only those objections made in writing and timely filed and received will be considered by the Bankruptcy Court at the January 27, 2004 Hearing.

January 6, 2004

KMART CORPORATION

By: 

One of its Attorneys

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Attorneys for Kmart Corporation

KMART BILLING AND EXPENSE GUIDELINES

Fees		Guidelines
1.	Long Billing Days	Over 14 hours – Skadden, Arps Over 10 hours – All other professionals
2.	Too Few Hours	Under 10 hrs/month
3.	Travel Time	½ hourly rate
4.	Intra Office Conferences	5% or less of overall fees
5.	Multiple Attendees	
	a. Court Hearings	Will be reviewed for reasonableness
	b. Depositions	
	c. Statutory Committee Meetings	
	d. All Other	
6.	Professionals performing administrative or clerical tasks	Not reimbursed
7.	Stewardship Investigation	Will be reviewed for reasonableness
8.	Lumped Entries	1 hour increments or more of lumped time will be reviewed
9.	Vague Descriptions	Will be reviewed for reasonableness
10.	Technical Billing Discrepancies	Professionals will be requested to correct any mistakes

EXHIBIT B

Expenses		Guidelines
1. Photocopies		10¢/page
2. Facsimiles		Incoming faxes not reimbursed. Outgoing faxes reimbursed at actual cost.
3. Travel Expenses		
a. Airfare		Coach fare
b. Hotel Expenses		
1. Rates		\$250/night – Chicago \$350/night – New York
2. Dry Cleaning		Not reimbursed
3. Mini-Bar		Not reimbursed
4. In-House Movies		Not reimbursed
c. Business Meals while traveling		Actual expenses up to \$100/day
d. Mileage		IRS rates
e. Entertainment – including alcoholic beverages		Not reimbursed
f. Limousines and Car Services		Actual expenses at less costly service available.

Expenses		Guidelines
3.	Overhead Expenses	
	a. Local meals	Not reimbursed
	b. Secretarial, Clerical, and Word Processing - including overtime	Not reimbursed
	c. Local Telephone	Not reimbursed
	d. Courier Service/Messenger	Actual Cost
	e. Overnight Service	Actual Cost
	f. Computer Assisted Research	Actual Cost

Professional		Final Fee Applications	Voluntary Reductions in Response to the Committee's Review	Percentage Reduction In Fees
Winston & Strawn	Fees	\$2,373,287.85	\$204,764.80	8.63%
	Expenses	\$257,057.52	\$5,152.64	
Saybrook Capital LLC	Fees	\$1,192,258.06	\$47,690.00	4.00%
	Expenses	\$93,504.88	\$5,000.00	
Unsecured Creditors' Committee Members	Fees			
	Expenses	\$172,247.00		
Official Equity Committee Members	Fees			
	Expenses	\$75,195.97		

EXHIBIT C