

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EOD AUG 01 2003

In re: : Case No. 02-B02474
: (Jointly Administered)
KMART CORPORATION, et al., : Chapter 11
: Hon. Susan Pierson Sonderby
Debtors. : Hearing Date: TBA
: Objection Deadline: TBA
:

NOTICE OF FILING

PLEASE TAKE NOTICE that the undersigned has today filed the **Fourth Interim And Final Application Of Jones Day For Allowance Of Compensation And For Reimbursement Of Expenses** with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois 60604, Courtroom 642.

Dated: July 31, 2003
Chicago, Illinois

OFFICIAL FINANCIAL
INSTITUTIONS' COMMITTEE

By: 

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ATTORNEYS FOR OFFICIAL
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KENNETH S. GARDNER, CLERK
PS REP. - SW

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ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES

Dated: July 31, 2003
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**FOURTH INTERIM AND FINAL APPLICATION OF JONES DAY FOR
ALLOWANCE OF COMPENSATION AND REIMBURSEMENT OF EXPENSES**

Jones Day,¹ counsel to the Official Financial Institutions' Committee (the "Committee") of the above-captioned reorganized debtors (collectively, the "Debtors"), hereby submits (i) its Fourth Application for Interim Allowance of Compensation of \$829,656.65 and Reimbursement of Expenses of \$96,566.78 for the Period January 1, 2003 through and including May 6, 2003 (the "Fourth Compensation Period") and (ii) its application for final allowance of compensation of \$3,774,396.20 and reimbursement of related expenses of \$389,854.29 for the period January 31, 2002 through and including May 6, 2003 (the "Combined Compensation Period").² In support of this Application, Jones Day respectfully represents as follows:

PRELIMINARY STATEMENT

Beginning with their commencement on January 22, 2002 (the "Petition Date"), these chapter 11 cases have involved an extraordinarily high level of activity. As detailed in the

¹ Jones, Day, Reavis & Pogue officially changed its name to Jones Day, effective January 2003.

² The Combined Compensation Period is comprised of (a) the Fourth Compensation Period and (b) the Prior Compensation Periods (as defined below) for which Jones Day previously has filed interim fee applications in these cases.

First Application of Jones, Day, Reavis & Pogue For Interim Allowance of Compensation and Reimbursement of Expenses (the "First Fee Application"), the Second Application of Jones, Day, Reavis & Pogue For Interim Allowance of Compensation and Reimbursement of Expenses (the "Second Fee Application") and the Third Application of Jones Day for Interim Allowance of Compensation and Reimbursement of Expenses for the Period September 1, 2002 through December 31, 2002 (the "Third Fee Application" and, together with the First Fee Application and the Second Fee Application, the "Prior Fee Applications"), these cases began with an immediate press of issues because of the tremendous volume of "first day" pleadings, the Debtors' dire financial condition and significant pre- and postpetition operational issues and the public interest raised by the Debtors' status as the largest retail chapter 11 debtor. In addition, the intense volume of pleadings, especially from tort claimants and landlords, the Debtors' reshuffling of top management and the need to employ significant numbers of advisors to reorganize the company after the immediate "first day" issues were resolved, added to the flurry of activity. Together, these conditions intensified the complexity of, and the need for swift action in, these chapter 11 cases.

Throughout these cases, Jones Day, among other things, represented the Committee at meetings with the Debtors, in court hearings and in negotiations with respect to the plan of reorganization. These efforts ultimately culminated in the consensual confirmation of a plan of reorganization and the Debtors' emergence from bankruptcy on an expedited time schedule.

During the Fourth Compensation Period specifically, the Debtors and the Committee intensified their focus on long-term business issues, including the refinement of the business plan and the Debtors' emergence from bankruptcy. The Committee and its

professionals also continued their participation in the Debtors' "stewardship investigation," which continued in earnest during the early parts of the Fourth Compensation Period. Finally, and most importantly, the Debtors, the Committee and other key constituencies negotiated the terms of a plan of reorganization, which the Court ultimately confirmed by order entered April 23, 2003. Accordingly, during the Fourth Compensation Period, Jones Day focused on the following key areas: (i) plan of reorganization and business operations; (ii) case administration; and (iii) stewardship investigation.

Plan of Reorganization and Business Operations

Jones Day attorneys worked closely with the Committee's financial advisors during the Fourth Compensation Period to advise the Committee with respect to many business plan issues. Jones Day also assisted in gathering and analyzing information required to ensure that the Committee could properly evaluate the plan of reorganization proposed by the Debtors. Such activities included preparation for, and participation in, meetings with various parties regarding plan negotiations, analysis of executory contracts and claims and drafting requests for relevant information, as well as analyzing the information produced. Jones Day attorneys spent significant amounts of time during the Fourth Compensation Period reviewing proposed modifications to the Plan and accompanying disclosure statement. Jones Day attorneys also assisted the Committee in analyzing the consequences of the district court's reversal of the critical vendor orders.

Administrative Matters

In addition to administrative matters relating to the organization and governance of the Committee during the Fourth Compensation Period, Jones Day, on behalf of the Committee, remained actively involved in case administration matters. Jones Day attorneys spent significant time reviewing the myriad motions and other requests for relief filed by the

Debtors and third parties. Jones Day also spent substantial time evaluating the Committee's position regarding these motions and taking actions as a result of those positions, including preparing for and attending meetings and court hearings.

Stewardship Investigation

As the Debtors publicly disclosed, with the assistance of their statutory committees, they undertook a comprehensive review of the Debtors' prepetition affairs, including with respect to certain management conduct and accounting practices. Jones Day attorneys participated in depositions, interviews and briefing sessions as part of this investigation. Jones Day attorneys also actively reviewed the voluminous materials produced by, or otherwise prepared by, the Debtors relating to the investigation. Finally, Jones Day attorneys took a lead role in deposing certain individuals related to the investigation.

BACKGROUND

General

1. On the Pctition Date, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). These cases are being administered jointly pursuant to an order of this Court.
2. On January 31, 2002, the United States trustee (the "U.S. Trustee") appointed the Committee, pursuant to section 1102(a)(1) of the Bankruptcy Code. On February 14, 2002, the Committec filed its Application of Official Committee of Institutional Creditors for Order Approving the Employment of Jones, Day, Reavis & Pogue as its Counsel (the "Retention Application"), in which the Committee sought authority to employ Jones Day as its counsel, pursuant to section 1103 of the Bankruptcy Code, effective as of January 31, 2002. On March 6, 2002, the Court entered an order granting the Retention Application (the "Retention

Order"). A copy of the Retention Order is attached hereto as Exhibit A and incorporated herein by reference.

3. On April 23, 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, as modified (the "Plan"). On May 6, 2003 (the "Effective Date"), the Plan became effective in accordance with its terms, and the Debtors emerged from chapter 11 as reorganized entities.

4. Jones Day makes this Application, pursuant to (a) sections 330(a) and 331 of the Bankruptcy Code, (b) Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (c) the Administrative Order Pursuant to 11 U.S.C. §§ 105(a) and 331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals, entered on January 25, 2002 (the "Administrative Order"), (d) Local Bankruptcy Rule 607 and (e) the Guidelines for Compensation and Expense Reimbursement of Professionals (the "Guidelines") adopted by the U.S. Trustee, for interim allowance of compensation for professional services rendered to the Committee during the Fourth Compensation Period in the amount of \$829,656.65 and for reimbursement of expenses incurred during the Fourth Compensation Period in the amount of \$96,566.78.

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

6. As identified on the cover sheet attached to this Application, Jones Day also requests final allowance of compensation for professional services rendered to the Committee during the Combined Compensation Period in the amount of \$3,774,396.20 and for reimbursement of expenses incurred during the Combined Compensation Period in the amount of

\$389,854.29. Jones Day filed the Prior Fee Applications requesting interim allowance of fees and reimbursement of expenses for the Period from January 31, 2002 through and including December 31, 2002 (the "Prior Compensation Periods"). In support of the final allowance of fees and reimbursement of expenses sought in this Application, Jones Day incorporates the Prior Fee Applications herein by reference.

Previous Payments Made to Jones Day

7. On June 27, 2002, Jones Day filed the First Fee Application seeking payment of fees in the amount of \$790,984.75 and reimbursement of expenses in the amount of \$48,610.93. By an order dated September 19, 2002, the Court approved the First Fee Application on an interim basis. The Court also authorized the Debtors to pay Jones Day all of the fees and expenses requested in the First Fee Application to the extent not already paid, which the Debtors did on October 15, 2002.

8. On October 22, 2002, Jones Day filed the Second Fee Application seeking payment of fees in the amount of \$917,297.25 and reimbursement of expenses in the amount of \$117,470.57. By an order dated December 31, 2002, the Court approved the Second Fee Application but did not authorize the Debtors to pay any amounts other than those authorized by the Administrative Order. In accordance with the Administrative Order, the Debtors have paid Jones Day 90% of the fees and 100% of the expenses for the period covered by the Second Fee Application.

9. On March 17, 2003, Jones Day filed the Third Fee Application seeking payment of fees in the amount of \$1,236,457.55 and reimbursement of expenses in the amount of \$127,206.01. The court did not hold a hearing on the Third Fee Application. In accordance with the Administrative Order, the Debtors have paid Jones Day 90% of the fees and 100% of the expenses covered by the Third Fee Application.

10. Further, as part of the Administrative Order, the Court authorized the submission of monthly professional statements to the Debtors and a procedure under which ninety percent of uncontested fees and one hundred percent of expenses requested in such monthly statements would be paid by the Debtors. Pursuant to the Administrative Order, Jones Day submitted two monthly statements ("Monthly Statements") to the Debtors for the Fourth Compensation Period:

A. Fees of \$362,395.10 and expenses of \$29,133.49 for the period from January 1, 2003 through and including January 31, 2003; and

B. Fees of \$253,851.75 and expenses of \$26,652.64 for the period from February 1, 2003 through and including February 28, 2003.

11. On April 17, 2003 Jones Day was paid in respect of its Monthly Statement for January 1, 2003 through January 31, 2003 in the aggregate amount of \$355,289.08, which represents ninety percent of the requested fees and one hundred percent of the requested expenses for that period.

12. On April 30, 2003, Jones Day was paid in respect of its Monthly Statement for February 1, 2003 through February 28, 2003 in the aggregate amount of \$254,951.71, which represents ninety percent of the requested fees and one hundred percent of expenses.

13. Pursuant to the Plan, the Debtors paid, on the Effective Date, ninety percent of Jones Day's estimated unbilled fees and one hundred percent of its estimated unbilled expenses for the remainder of the cases. Accordingly, on or about May 6, 2003, Jones Day received \$189,693.87 for its estimated fees and expenses for the period from March 1, 2003 through and including the Effective Date. Jones Day has since determined that its actual fees

and expenses exceeded its estimated fees and expenses for this period and has submitted additional invoices to the Debtors for these amounts. Further, this Application reflects Jones Day's actual fees and expenses for these cases through the Effective Date.

14. Finally, consistent with Section 15.4 of the Plan, Jones Day will submit invoices to the Debtors for its fees and expenses in preparing this Application and attending to issues related to the final fee application hearing, including responding to inquiries from the fee review committee and fee auditor appointed in these cases. To date, Jones Day's fees and expenses are approximately \$6,000, however, the final amount will depend on the amount of time that Jones Day professionals are required to spend responding to inquiries from the fee review committee and fee auditor. Jones Day reserves the right to submit a detailed invoice to the Debtors with respect to these fees that are authorized pursuant to Section 15.4 of the Plan, within 20 days of the final hearing on this Application. While Jones Day does not believe that these fees and expenses are subject to Court approval, out of an abundance of caution, Jones Day has included the request herein.

SERVICES RENDERED BY JONES DAY

General

15. During the Fourth Compensation Period, Jones Day professionals and paraprofessionals devoted a total of 2,520.60 hours to rendering services to the Committee. The blended hourly rate for professional and paraprofessional services performed by Jones Day during the Fourth Compensation Period was approximately \$330, excluding non-working travel time. A summary schedule of the names of each Jones Day professional and paraprofessional that rendered services to the Committee during the Fourth Compensation Period, their respective hourly rates and the total hours charged by each such professional and paraprofessional is attached hereto as Exhibit B. Also attached as Exhibit B is a summary of the amount of time

billed by each professional or paraprofessional to each time category during the Fourth Compensation Period. Finally, Jones Day has included a summary schedule of the names of each Jones Day professional and paraprofessional that rendered services to the Committee for the entire case.

16. Jones Day has accounted for its time by designating twenty separate categories to which time may be billed. A summary of the monthly and total amount of time billed to each of these categories as well as detailed monthly invoices for the Fourth Compensation Period for each of these categories, which contain individual time entries designating the professional or paraprofessional rendering a service, the time expended on a particular service and a description of the service rendered, are attached hereto collectively as Exhibit C. While Jones Day has attached a summary schedule for the Prior Compensation Periods, detailed invoices for the Prior Compensation Periods were filed with the Court in the Prior Fee Applications. A summary of the services rendered in each category to which significant time was billed during the Fourth Compensation Period is provided below. Summaries for Prior Compensation Periods are contained in the Prior Fee Applications.

Particularized Services

A. Case Administration — 201.60 hours — \$49,547.00

17. As in any large chapter 11 case, a large percentage of Jones Day's efforts on behalf of the Committee have been in the case administration area. During the Fourth Compensation Period, general case administration work included: (a) governance issues for the Committee; (b) keeping the Committee fully informed of the status of these chapter 11 cases, including through periodic summaries of pending and disposed matters; (c) reviewing the multitude of pleadings filed with the Court and other relevant materials concerning the Debtors' reorganization efforts; (d) preparing correspondence to the Committee, the Debtors and other

third parties; (e) maintaining a case calendar, docket and contact list; (f) communicating with the Debtors' professionals regarding the general status of the cases and current issues therein; (g) coordinating with the official unsecured creditors' committee (the "Creditors' Committee") and the official equity holders' committee (the "Equity Committee"); and (h) coordinating Committee activities with FTI Consulting, Inc. ("FTI"), the Committee's financial advisors.

18. Jones Day also reviewed, analyzed and summarized for the Committee the large volume of motions that continue to be filed in these chapter 11 cases by both the Debtors and third parties. Jones Day negotiated proposed orders with the Debtors on many of the motions, thereby resolving most of the disputes between the Debtors and the Committee absent intervention from the Court and undoubtedly saving the estates the cost of litigating these matters while still zealously representing the Committee's interests.

B. Creditor Inquiries — 6.20 hours — \$2,119.80

19. While Jones Day did not received a large volume of calls from creditors during the Fourth Compensation Period, it attempted to respond to all inquiries from non-Committee members regarding the status of the chapter 11 cases.

C. Meetings — 91.60 hours — \$42,190.00

20. Because of the nature of representing a Committee, Jones Day attorneys spent significant time in meetings, both in person and telephonically, with the Committee's members and advisors. Jones Day attorneys also participated in monthly meetings with the Debtors, the Committee and the Creditors' Committee regarding the status of the chapter 11 cases, in addition to separate meetings with representatives of the Debtors and the Committee, as necessary. Finally, Jones Day attorneys spent significant amounts of time preparing for and attending to follow-up tasks as a result of these meetings.

D. Executory Contracts and Unexpired Leases — 116.00 hours — \$35,149.00

21. Jones Day attorneys reviewed all of the motions filed by the Debtors and third parties regarding the Debtors' obligations under section 365(d)(3) of the Bankruptcy Code with respect to unexpired leases of nonresidential real property. Jones Day attorneys also spent significant amounts of time reviewing and analyzing the multitude of pleadings and responses related to the Debtors' request for an extension of time to assume, assume and assign, or reject unexpired leases of nonresidential real property pursuant to section 365(d)(4). Jones Day also continued to work with FTI to evaluate the Debtors' motions to assume or reject executory contracts, including the agreement with Fleming. Finally, Jones Day attorneys spent significant amounts of time analyzing issues with respect to the Debtors' Johnstown location.

E. Automatic Stay/Adequate Protection — .20 hours — \$135

22. Jones Day attorneys devoted limited time to addressing a motion for relief from the automatic stay.

F. Plan of Reorganization — 885.70 hours — \$349,958.10

23. In connection with the proposal and confirmation of the Plan, Jones Day attorneys spent substantial time during the Fourth Compensation Period requesting, reviewing and analyzing information relevant to plan of reorganization issues, including the subsidiary guarantees and other significant claims. In addition, Jones Day attorneys, reviewed, analyzed and prepared comments on the draft plan of reorganization and accompanying disclosure statement. Jones Day attorneys also reviewed and analyzed all objections to the Plan. Finally, Jones Day attorneys attended the hearings to approve the disclosure statement and to consider confirmation of the Plan.

G. Use, Sale, Lease of Assets — 22.50 hours — \$5,552.50

24. Jones Day devoted time to reviewing and analyzing matters related to the Debtors' 2003 store closings.

H. DIP Financing — 8.00 hours — \$3,130.50

25. Jones Day attorneys attended to matters related to the Debtors' exit financing facility.

I. Claims Administration — 118.80 hours — \$29,852.00

26. Jones Day reviewed and analyzed the multitude of motions filed by third-parties seeking an order deeming a late-filed claim as timely filed. Jones Day also reviewed settlements that the Debtors reached with third-party claimants, and reviewed and analyzed the settlement of claims with Fleming. Finally, Jones Day attorneys prepared for and attended court hearings regarding these matters.

J. Court Hearings — 182.10 hours — \$60,409.00

27. Jones Day's activities during the Fourth Compensation Period included preparation for, and participation in, omnibus and other court hearings on a variety of matters described elsewhere in this Application.

K. General Corporate/Real Estate — 10.60 hours — \$4,119.00

28. Jones Day attorneys worked with FTI and the Committee to review and analyze the Debtors' business operations, including relating to store closings and the related auctions. Jones Day also continued to monitor the Debtors' financial reports and other economic information.

L. Employee Matters — 49.10 hours — \$13,121.50

29. Jones Day attorneys devoted time during the Fourth Compensation Period to analyzing the Debtors' pension liability in connection with preliminary plan of reorganization issues. Jones Day attorneys also reviewed the terms of separation agreements with certain members of senior management and claims for severance by former employees. Finally, Jones Day attorneys reviewed, analyzed and drafted pleadings in connection with a motion by a former director and officer to access proceeds of the Debtors' directors' and officers' insurance policy.

M. Litigation — 40.70 hours — \$9,992.00

30. Jones Day attorneys reviewed pleadings and attended Court hearings related to adversary matters to protect the Committee's interests. In addition, Jones Day attorneys spent time monitoring the various pending appeals in these cases to protect the Committee's interests.

N. Professional Retention/Fee Issues — 283.20 hours — \$43,356.00

31. At the request of the Committee, and in furtherance of the Committee's statutory and fiduciary responsibilities, Jones Day attorneys and paraprofessionals spent substantial time reviewing and summarizing invoices it receives from retained and ordinary course professionals to ensure that fees and expenses billed were reasonable and appropriate. In addition, Jones Day attorneys devoted time to participating in, and complying with requirements of, the joint fee review committee. Finally, in connection with its internal policies to supplement its disclosures of relationships to parties in interest, Jones Day attorneys and paraprofessionals spent time reviewing, evaluating and distilling information gleaned from Jones Day's internal conflicts database to determine if further disclosure is necessary in accordance with the Bankruptcy Code and Bankruptcy Rules.

O. Fee Application Preparation — 46.70 hours — \$11,100.50

32. In anticipation of filing this Application, and to file monthly fee statements, as required by the Administrative Order, Jones Day attorneys reviewed time and expense records on a monthly basis in order to ensure their accuracy and compliance with all applicable law and fee and expense guidelines. Jones Day attorneys also spent time during the Fourth Compensation Period preparing the Third Fee Application.

P. Nonworking Travel — 94.10 hours — \$22,301.25

33. Jones Day attorneys spent significant amounts of time traveling to meetings with the Committee and the Debtors in Chicago and New York. In addition, Jones Day attorneys spent time traveling to depositions and meetings in connection with the stewardship investigation. For travel time during which Jones Day attorneys are not otherwise able to work, Jones Day has agreed to bill its time at fifty percent of its normal hourly rates.

Q. Stewardship — 363.50 hours — \$147,623.50

34. As the Debtors have publicly disclosed, and as this Court is aware, the Debtors, with the assistance of their statutory committees, undertook an extensive investigation into the Debtors' practices. In addition, various governmental agencies also have undertaken related investigations. Jones Day attorneys and paraprofessionals spent significant amounts of time reviewing the materials provided by Debtors' counsel regarding the investigation. Jones Day attorneys also participated in interviews and depositions that were conducted as part of the investigation, as well as briefings and conferences among the Debtors and the other statutory committees. Finally, Jones Day attorneys spent significant time analyzing the relevant information to determine what further actions the Committee should take in connection with the investigation.

EXPENSES

General

35. Section 330 of the Bankruptcy Code authorizes "reimbursement for actual, necessary expenses" incurred by professionals employed in a chapter 11 case. Accordingly, Jones Day seeks reimbursement for expenses ("Expenses") incurred in connection with rendering services to the Committee during the Fourth Compensation Period in the amount of \$96,566.78. A schedule of Expenses, in addition to detailed descriptions for the Fourth Compensation Period, is attached hereto as Exhibit D. Also attached as Exhibit D is a summary of Expenses for the entire case. Detailed descriptions of Expenses for Prior Compensation Periods were included in the Prior Fee Applications.

36. Jones Day has established the following policies with respect to Expenses:
- Jones Day has retained documentation for all Expenses in excess of \$25.00 and, upon request, can provide such documentation to the Court, the U.S. Trustee or the Debtors.

- Except as otherwise described herein, no amortization of the cost of any investment, equipment or capital outlay is included in the Expenses. In addition, except as otherwise described herein, for those items or services that Jones Day justifiably purchased or contracted from a third-party (such as outside lien search fees), Jones Day seeks reimbursement only for the exact amount billed to Jones Day by the third-party vendor and paid by Jones Day to the third-party vendor.
- Charges for airline travel include the cost of each airline ticket used in connection with the provision of services to the Committee plus, for each airline ticket issued by the travel service regularly used by Jones Day, a \$30 transaction fee to cover travel service expenses.
- Photocopying by Jones Day was charged at \$.10 per page, in accordance with the Court's standing order.
- Jones Day did not charge for facsimile services (incoming or outgoing) unless provided by an outside vendor.
- Meals charged to the Debtors either (a) were associated with out-of-town travel or late night, weekend or holiday work or (b) were associated with meetings at Jones Day of the full Committee or subcommittees thereof or with meetings at Jones Day with other professionals retained in the bankruptcy cases.
- All airfare expenses are for coach class travel.
- Non-working travel time was billed at 50% of rates.
- Computer assisted legal research was used only when time pressures rendered it impracticable to conduct such research manually or where the use of such computer services was determined to be more cost efficient. Computer assisted research is billed on a per-search or per-minute basis, depending upon the provider. Jones Day has negotiated a contract for a flat monthly rate with various computer assisted legal research vendors. Jones Day then allocates its monthly costs among its clients depending on each client's specific usage for the month. Jones Day used computer research in the following instances in connection with certain internal legal memoranda and in preparation of pleadings filed with the Court:
 - case law research regarding particularly pressing or important issues; and
 - shepardization of cases cited in pleadings filed with the Court.

With computer assistance, the total shepardization and research time was greatly reduced. To complete this shepardizing and research manually

would have taken significantly more lawyer or paralegal time, resulting in a greater cost to the Debtors' estates.

37. As set forth in Exhibit D, during the Fourth Compensation Period, Jones Day was required to incur substantial Expenses for telephone, copying and overnight delivery services. These expedited communications Expenses were necessitated by the following factors:

- the number and geographic diversity of the Committee's members and the Debtors' and their professionals;
- the urgency of various issues that faced by the Committee immediately after its appointment and that have arisen consistently as these cases have progressed; and
- the requirements under the case management order entered in these cases.

These exigent circumstances required Jones Day to rely on rapid forms of communications, such as facsimile and overnight deliveries, to ensure that deadlines would be met and responses would be timely.

Adjustments to Fees and Expenses

38. Consistent with its own internal policies, as well as to comply with the "reasonableness" requirements of section 330 of the Bankruptcy Code, Jones Day has reviewed its monthly services descriptions and expense detail and has determined that certain fees and Expenses should not be charged to the Debtors. In particular, as described above, Jones Day billed its time at fifty percent of its normal hourly rates for travel time during which Jones Day attorneys were unable to work. This amounted to a reduction in fees of more than \$20,000 during the Fourth Compensation Period. In addition, Jones Day did not charge for facsimile transmissions, incoming or outgoing, and reduced its normal billing rates for photocopies to ten cents per page.

RELEVANT LEGAL STANDARDS

39. The professional services rendered by Jones Day during the Fourth Compensation Period and throughout these cases required a high degree of professional competence and expertise so that the numerous issues requiring evaluation and response by the Committee could be addressed with skill and dispatch. The provision of such services has required substantial time and effort. Jones Day submits that the services rendered to the Committee were performed efficiently, effectively and economically and that the results obtained thus far have benefited not only the Committee but the entire unsecured creditor constituency, as well as the Debtors' estates.

Standards for Allowance of Compensation

40. Section 330 of the Bankruptcy Code provides, in pertinent part, for payment of:

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessionals person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1). To grant a request for compensation pursuant to section 330 of the Bankruptcy Code, a court must find that such request is reasonable. The reasonableness of a compensation request is determined by taking into account the nature, extent and value of the services provided by the professional and the cost of comparable services in nonbankruptcy contexts. See Zolfo Cooper & Co. v. Sunbeam-Oster Co., 50 F.3d 253, 258 (3d Cir. 1995); In re Palladino, No. 01-00972, 2001 Bankr. LEXIS 1322, at * 9-10 (N.D. Ill. Oct. 4, 2001). In the "market-driven approach" to compensation requests adopted by the Seventh Circuit, the primary focus of the inquiry is the cost of comparable services in nonbankruptcy contexts. See In re UNR Indus., Inc., 986 F.2d 207, 209-10 (7th Cir. 1992) ("The object in awarding a reasonable

attorney's fee . . . is to give the lawyer what he would have gotten in the way of a fee in an arm's length negotiation, had one been feasible. In other words the object is to simulate the market where a direct market determination is infeasible." This market-based approach permits flexibility in billing arrangements. The so-called "lodestar" method (hourly rate multiplied by hours worked) is currently the most-widely utilized method for compensation arrangements.³ Regardless of the manner in which compensation is calculated, however, "the baseline rule is for firms to receive their customary rates." Zolfo Cooper, 50 F.3d at 259.

41. The legislative history of section 330 of the Bankruptcy Code explains the need to provide for compensation comparable to other nonbankruptcy legal services:

The effect of [section 330] is to overrule . . . cases that require fees to be determined based on notions of conservation of the estate and economy of administration. If [those] cases were allowed to stand, attorneys that could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

³ Jones Day has utilized the lodestar method for calculating its compensation requests submitted in the Monthly Statements and in this Application. There is a strong presumption that the lodestar product is reasonable under section 330 of the Bankruptcy Code. See Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 565 (1986); In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991).

H.R. Rep. No. 595, 95th Cong., 1st Sess. 329-30 (1977); see also 124 Cong. Rec. S17,408 (daily ed. Oct. 6, 1978). Indeed, the perspective from which an application for an allowance of compensation should be viewed in a reorganization case was aptly stated by Congressman Edwards on the floor of the House of Representatives on September 28, 1978, when he made the following statement in relation to section 330 of the Bankruptcy Code:

[B]ankruptcy legal services are entitled to command the same competency of counsel as other cases. In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable services other than in a case under title 11. Contrary language in the Senate report accompanying S.2266 is rejected, and Massachusetts Mutual Life Insurance Company v. Brock, 405 F.2d 429, 432 (5th Cir. 1968) is overruled. Notions of economy of the estate in fixing fees are outdated and have no place in a bankruptcy code.

124 Cong. Rec. H11, 091-092 (daily ed. Sept. 28, 1978) (statement of Rep. Edwards) (emphasis added); see also In re Busy Beaver Building Ctr., Inc., 19 F.3d 833, 849-50 & n.22 (3d Cir. 1995) (extensively addressing the legislative history of section 330 of the Bankruptcy Code); In re McCombs, 751 F.2d 286 (8th Cir. 1984); In re Carter, 101 B.R. 170 (Bankr. D.S.D. 1989); In re Public Serv. Co. of New Hampshire, 93 B.R. 823, 830 (Bankr. D.N.H. 1988); In re White Motor Credit Corp., 50 B.R. 885, 890 (Bankr. N.D. Ohio 1985).

42. The rates charged by Jones Day in this Application are the same rates charged by the Firm for comparable nonbankruptcy services, and the application of the foregoing criteria more than justifies the compensation and expense reimbursement requested herein. Moreover, Jones Day's fees are not unusual, especially given the size and complexity of the Debtors' chapter 11 cases, and they are commensurate with fees that Jones Day has been awarded in other chapter 11 cases and that other attorneys of comparable experience and expertise charge on a regular basis in chapter 11 cases. Jones Day's lodestar calculation is based upon hourly

rates that are well within the range of rates that are charged by comparable firms in other large bankruptcy cases. Accordingly, Jones Day's lodestar calculation is reasonable under section 330 of the Bankruptcy Code. See Drexel Burnham Lambert, 133 B.R. at 22.

43. Jones Day submits that its services contributed a substantial benefit to the Committee, the unsecured creditor body and the Debtors' estates and have furthered the Committee's (and the unsecured creditors') ultimate goals.

44. During the Fourth Compensation Period and throughout these cases, Jones Day was required to furnish extensive services that often fully occupied the time of its attorneys and paraprofessionals, frequently to the exclusion of other Firm matters and clients. Notably, the same core groups of Jones Day attorneys have worked on the Debtors' cases on behalf of the Committee, thereby maximizing efficient service delivery. If these were not cases under the Bankruptcy Code, Jones Day would charge its client, and expect to receive on a current basis, an amount at least equal to the amounts requested herein for the professional services rendered. Pursuant to the criteria normally applied in bankruptcy cases, and based upon the factors to be considered in accordance with sections 330 and 331 of the Bankruptcy Code, the results that have been achieved to date more than substantiate charges in the amount requested.

Standards for Allowance of Expenses

45. Sections 330(a)(2) and 503(b)(4) of the Bankruptcy Code permit reimbursement for actual, necessary expenses. See Zolfo Cooper, 50 F.3d at 258; White Motor, 50 B.R. at 891-92. As noted above, Jones Day has established standards such that it charges only those expenses that it deems reasonable and necessary. Accordingly, those Expenses for which reimbursement is sought in this Application satisfy the standards presented by section 330(a)(2) of the Bankruptcy Code and the Guidelines.

Reimbursement of Committee Expenses

46. Pursuant to the Administrative Order, Jones Day submits requests for reimbursement of expenses on behalf of individual Committee members (the "Committee Expense Requests") as part of each Monthly Statement that it serves on the parties entitled to receive notice under the Administrative Order. During the Fourth Compensation Period, Jones Day is submitting Committee Expense Requests in the amount of \$14,731.29, of which certain amounts have been submitted to and reimbursed by the Debtors pursuant to the Administrative Order. As part of this Application, Jones Day seeks allowance of the Committee Expense Requests as actual and necessary expenses incurred by Committee members in the exercise of their fiduciary duties as members of the Committee. Detailed descriptions of the Committee Expense Requests not previously provided to the Court in the Prior Fee Applications are attached hereto as Exhibit E. Further, Jones Day, on behalf of the Committee, seeks final allowance and payment of the Committee Expense Requests in the amount of \$50,362.62.

CONCLUSION

47. The fees and expenses requested herein by Jones Day are based on its usual and customary hourly rates and expenses charged during the Fourth Compensation Period for work performed for other clients on both bankruptcy and nonbankruptcy related matters. Jones Day has filed no prior fee applications in these cases. Neither Jones Day, nor any principal, partner or employee thereof has received or has been promised any compensation for services rendered or to be rendered in any capacity in connection with these cases.

48. No agreement or understanding exists between Jones Day or any third person for the sharing of compensation, except as allowed by section 504(b) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 2016 with respect to sharing of compensation between and among partners of Jones Day.

49. Jones Day has not represented or held an interest adverse to the Debtors' estates, and is a disinterested person under section 327(a) of the Bankruptcy Code.

50. All of the services for which compensation is requested hereunder were rendered at the request of and solely on behalf of the Committee, and not on behalf of any other entity.

WHEREFORE, Jones Day respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit F: (i) allowing on a final basis compensation of \$3,774,396.20 for services rendered in connection with these chapter 11 cases; (ii) allowing on a final basis reimbursement of Expenses incurred during these cases of \$389,854.29; (iii) authorizing and directing the Debtors to pay to Jones Day the full amount of the allowed compensation and Expenses, to the extent not already paid; (iv) directing the Debtors to pay any amounts required pursuant to Section 15.4 of the Plan; (v) awarding the Committee Expense Requests in the amount of \$50,362.62 and (vi) granting such other and further relief as the Court may deem proper.

Dated: July 31, 2003

Respectfully submitted,



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