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

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
JUL 31 2003
KENNETH S. GARDNER, CLERK
PS REP - RG

In re:) Case no. 02-B02474
)
KMART CORPORATION) (Jointly Administered)
et al.,) Chapter 11
)
Debtors.) Judge Susan Pierson Sonderby

**FIFTH AND FINAL FEE APPLICATION
OF ROCKWOOD GEMINI ADVISORS AS REAL ESTATE ADVISOR
TO THE DEBTORS FOR ALLOWANCE OF COMPENSATION
FOR SERVICES RENDERED AND FOR REIMBURSEMENT
OF DISBURSEMENTS INCURRED FOR THE PERIOD
OF MAY 1, 2003 THROUGH MAY 6, 2003**

Name of Applicant: Rockwood Gemini Advisors
Authorized to Provide Professional Services to: Kmart Corporation
Date of Retention: January 22, 2002
Period for which compensation and reimbursement is sought: January 22, 2002 to May 6, 2003
Amount of Compensation sought as actual, reasonable and necessary: \$2,851,571.25
Amount of Expense Reimbursement sought as actual, reasonable and necessary: \$ 517,288.58

This is final application.

1. Rockwood Gemini Advisors ("RGA") has been employed to represent Kmart Corporation ("Debtor") pursuant to an Order entered by this Court on February 13, 2002. A Final Order Pursuant to 11U.S.C. §327 (a) and §329 Authorizing the Employment and Retention of Rockwood Gemini Advisors as Real Estate Consultant to the Debtors, attached as Exhibit A, authorized RGA to be compensated on a flat fee arrangement and to be reimbursed for actual and necessary out-of-pocket expenses. Commencing March 15, 2003, RGA and the Debtor agreed that RGA would be compensated on an hourly fee basis of \$125 to \$325 per hour and to no longer receive a flat monthly fee.
2. RGA makes its final application for allowance for reimbursement of professional fees incurred in the amount of \$2,851,571.25 and for out-of-pocket expenses in the amount of \$517,288.58 for a total of \$3,368,859.83 for the entire period commencing January 22, 2002 and ending May 6, 2003 ("Compensation Period"). Of these amounts, RGA has previously submitted billing statements and Interim Fee Applications to the Debtors, Counsel to the Debtors, counsel to the Debtors' post-petition lenders, the U.S. Trustee, counsel to the Official Finance Committee and counsel to the Official Creditor's Committee in accordance with the Administrative Order Pursuant to 11 U.S.C. §105 (a) and §331 Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals requesting payment of fees in the amount of \$2,851,571.25, representing 100% of RGA's total fees earned during the Compensation Period and for \$517,288.58 representing 100% of RGA's expenses incurred during the Period, for a total of \$3,368,859.83 of which RGA has received from the Debtors \$3,083,702.71 as of the date of this application leaving a balance due of \$285,157.13.
3. In rendering its services, as further described below, to the Debtor, RGA has expended approximately 15,201 hours. A summary listing time spent by day for all RGA personnel was attached as Exhibit B to each of the Interim Fee Applications previously filed in this Case. RGA has presented the services rendered by naming each person who performed services throughout the entire fee period, the number of hours spent and a separate general description of the work spent overall RGA. Detailed summaries of RGA's out-of-pocket expenses were attached as Exhibit C to each of the Interim Fee Applications.
4. Pursuant to the Final Order Under to 11U.S.C. §327 (a) and §329 and Bankruptcy Rules 2014 (a) and 5002 Authorizing the Employment and

Retention of Rockwood Gemini Advisors as Real Estate Advisor to the Debtors, RGA is entitled to fees and expenses for professional services rendered during the entire Compensation Period in the amount of \$3,368,859.83.

5. RGA has previously filed a First Interim Application for the period of January 22, 2002 through April 30, 2002.
6. RGA has previously filed a Second Interim Application for the period of May 1, 2002 through August 31, 2002.
7. RGA has previously filed a Third Interim Application for the period of September 1, 2002 through December 31, 2002.
8. RGA has previously filed a Fourth Interim Application for the period of January 1, 2003 through April 30, 2003.
9. During the Compensation Period, RGA provided the following services to the Debtor:
 - a. Preparation of a proprietary financial model for the purpose of valuing the portfolio of fee-hold and leasehold interests in the Kmart Assets and calculate their value on a property-by-property basis in the current marketplace.
 - b. Conducting in depth meetings with key Kmart personnel to discuss valuation potentials and define any operational issues that may affect the valuation of the Kmart Assets.
 - c. Working with Kmart to identify and, where possible, resolve or quantify any unresolved issues or detriments to value.
 - d. Review and analysis of available documentation and data regarding the Kmart Assets including, but not limited to, leases, lease amendments, reciprocal operating agreements, development agreements, site plans, floor plans, surveys, zoning information, feasibility studies, market studies, appraisals, individual store sales profit and loss statements, operating and projected capital budgets, financial statements and violation reports.
 - e. Conducting market analyses utilizing proprietary databases, public records, GIS systems, internet databases and interaction with local real estate professionals.

- f. Determination of the maximum additional development potential for each parcel, if appropriate, and the potential impact it may have on the value of existing improvements.
- g. Analysis of macro demographic trends regarding the counties in which the Kmart Assets are located, and do the same for pertinent surrounding markets.
- h. Preparation of detailed financial models for the Kmart Assets including a detailed discussion regarding the underlying assumptions utilized in developing the financial models.
- i. Assist Kmart in the development of a strategic action plan that: (i) clearly identifies and quantifies complex issues; (ii) assesses and values alternative courses of action; and, (iii) provides for the most effective means of achieving Kmart's objectives with respect to its real estate portfolio.
- j. Preparation of a portfolio database of the Kmart Assets in Excel form which includes the individual estimated property values for confidential internal use by Kmart management and its legal and other advisors.
- k. Preparation of status reports to Kmart regarding the execution of the Assignment and attendance at regular Kmart staff meetings regarding current real estate issues.
- l. Attendance at Bankruptcy Court Hearings.
- m. Continued Assistance with the disposition of the 2003 closed stores in conjunction with Kmart's disposition agent and other professionals.
- n. Assistance to the Company and its advisors with the formulation of a marketing and disposition plan of certain of the Kmart Assets.
- o. Assistance and testimony at the Plan Confirmation Hearings.
- p. Development, management, preparation, implementation, execution and delivery of Lease Abstraction database.

WHEREFORE, RGA respectfully requests that this Court grant an Allowance be made to it in the sum of \$2,851,571.25 as compensation of necessary professional services rendered to the Debtor for the period commencing January 22, 2002 and ending on May 6, 2003 and the sum of \$517,288.58 for reimbursement of actual and necessary expenses incurred during that period, and that such sums be authorized for payment less what has been previously been paid by the Debtor to RGA pursuant to the Administrative Order, and for such other and further relief as this Court deems just and proper.

Respectfully submitted by:
Rockwood Gemini Advisors


By: Michael P. Deighan
Its: Managing Director

Exhibit A

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

In re:)	Case No. 02-B02474
)	(Jointly Administered)
KMART CORPORATION, <u>et al.</u> ,)	Chapter 11
)	Chief Judge Susan Pierson Sonderby
Debtors.)	

**FINAL ORDER UNDER 11 U.S.C. §§ 327(a) AND 329 AND
BANKRUPTCY RULES 2014(a) AND 5002 AUTHORIZING THE
EMPLOYMENT AND RETENTION OF ROCKWOOD GEMINI
ADVISORS AS REAL ESTATE ADVISOR TO THE DEBTORS**

Upon the application dated January 22, 2002 (the "Application"), of Kmart Corporation ("Kmart") and certain of its domestic subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors" or the "Company"), for entry of an order, pursuant to sections 327(a) and 329 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., as amended (the "Bankruptcy Code"), and Rules 2014(a) and 5002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing each of the Debtors to employ and retain Rockwood Gemini Advisors ("RGA") as their real estate advisor during the pendency of these chapter 11 cases, and upon the Affidavit and Statement of Michael P. Deighan (the "Deighan Affidavit"); and upon the Affidavit and Statement of Charles C. Conaway in Support of Chapter 11 Petitions and First Day Orders, and the Court being satisfied based on the representations made in the Application and the Deighan Affidavit that RGA represents no interest adverse to the Debtors' estates, that RGA is a disinterested person within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and RGA's employment is

necessary and would be in the best interests of each of the Debtors, their estates, and their creditors and shareholders, and it appearing that proper and adequate notice of the Application has been given and no other or further notice is necessary; and upon the record herein; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Application, as modified below, is granted.
2. Pursuant to sections 327(a) and 329 of the Bankruptcy Code each of the Debtors, as a debtor-in-possession, is authorized to employ and retain RGA as of the commencement of these cases as its real estate advisor during the pendency of these chapter 11 cases, to perform the services set forth in the Application, upon the terms and conditions to the Retention Agreement, as modified below.
3. All compensation and reimbursement of expenses to be paid to RGA shall be subject to prior approval of this Court in accordance with the requirements under sections 330 and 331 of the Bankruptcy Code and the order of this Court which establishes procedures for monthly compensation and reimbursement of expenses.
4. The United States Trustee shall retain all rights to object to RGA's interim and final fee applications (including expense reimbursement) on all grounds including but not limited to the reasonableness standard provided for in Section 330 of the Bankruptcy Code.
5. All requests of RGA for payment of indemnity pursuant to the Retention Agreement arising during the pendency of these Chapter 11 cases shall be made by means of an application (interim or final as the case may be) and shall be

subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Retention Agreement and is reasonable based upon circumstances of the litigation or settlement in respect of which indemnity is sought.

6. The Retention Agreement is further modified to provide that in no event shall RGA be indemnified if the Debtors or a representative of their estates assert a claim which is determined by a final order of a court of competent jurisdiction to have arisen out of RGA's own bad-faith, self-dealing, reckless or willful misconduct, or negligence.

7. In the event that RGA seeks reimbursement for attorney's fees from the Debtors pursuant to the Retention Agreement, the invoices and supporting time records from such attorneys shall be included in RGA's own applications (both interim and final) and such invoices and time records shall be subject to the United States Trustee's guidelines for compensation and reimbursement of expenses and approval of this Court under the standard of sections 330 and 331 of the Bankruptcy Code without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

8. To the extent that this Order is inconsistent with any prior order, pleading or the Retention Agreement with respect to RGA, the terms of this Order shall govern.

Dated: Chicago, Illinois
February 13, 2002

Chief Judge Susan Pierson Sonderby
UNITED STATES BANKRUPTCY JUDGE

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

In re:)	Case No. 02-B02474
)	(Jointly Administered)
KMART CORPORATION, <u>et al.</u> ,)	Chapter 11
)	Chief Judge Susan Pierson Sonderby
)	
Debtors.)	

**ADMINISTRATIVE ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 331
ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF PROFESSIONALS**

Upon the motion dated January 22, 2002 (the "Motion"), wherein Kmart Corporation ("Kmart") and 37 of its domestic subsidiaries and affiliates, debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors"), moved this Court for entry of an order, pursuant to sections 105(a) and 331 of the Bankruptcy Code, establishing procedures for interim compensation and reimbursement of expenses of professionals specifically retained by order of this Court; it appearing to the Court that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors; (iv) proper and adequate notice of the Motion and the hearing thereon has been given and that no other or

further notice is necessary; (v) upon the record herein after due deliberation thereon, that the relief should be granted as set forth below,

1. Except as may otherwise be provided in Court orders authorizing the retention of specific professionals, all professionals in these cases may seek interim compensation in accordance with the following procedure:

a. On or before the last day of each month following the month for which compensation is sought (the "Monthly Statement Date"), each professional will submit a monthly statement to: (i) the Debtors at Kmart Corporation, 3100 West Big Beaver Road, Troy, MI 48084-3163 (Attn: Janet Kelley, Senior Vice President & 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 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); (iv) counsel to any official committee appointed in these cases (who shall serve a notice of appearance on the Master Service List promptly after its retention); and (v) the United States Trustee, U.S. Trustee, Region 11, Northern District of Illinois, 227 West Monroe Street, Suite 3350, Chicago, IL

60606. Each such person receiving such a statement will have twenty (20) days after the Monthly Statement Date to review the statement.

b. At the expiration of the twenty (20) day period, the Debtors shall promptly pay ninety percent (90%) of the fees and one hundred percent (100%) of the disbursements identified in each monthly statement, except such fees or disbursements as to which an objection has been served as provided in paragraph (c) below. Any professional who fails to submit a monthly statement shall be ineligible to receive further payment of fees and expenses as provided herein until such time as the monthly statement is submitted. The first statements shall be submitted and served by each of the professionals by March 29, 2002 and shall cover the period from the commencement of this case through February 28, 2002;

c. In the event that any of the Debtors, the United States Trustee, the Debtors' postpetition lenders or the Committee has an objection to the compensation or reimbursement sought in a particular statement, such party shall, within twenty (20) days of the Monthly Statement Date, serve upon the respective professional and the other persons designated to receive monthly statements, a written "Notice of Objection to Fee Statement" setting forth the precise nature of the objection and the amount at issue. Thereafter, the objecting party and the Professional whose statement is objected to shall attempt to reach an agreement regarding the correct payment to be made. If the parties are unable to reach an agreement on the

objection within twenty (20) days after receipt of such objection, the objecting party may file its objection with the Court and serve such objection on the respective professional and the other parties designated to receive monthly statements parties listed above and the Court shall consider and dispose of the objection at the next interim fee application hearing. The Debtors will be required to pay promptly those fees and disbursements that are not the subject of a Notice of Objection to Fee Statement.

d. Approximately every four (4) months, each of the Professionals shall file with the Court and serve on the parties designated to receive monthly statements, on or before the 45th day following the last day of the compensation period for which compensation is sought, an application for interim Court approval and allowance, pursuant to section 331 of the Bankruptcy Code, of the compensation and reimbursement of expenses requested for the prior four (4) months. The first such application shall be filed on or before June 17, 2002 and shall cover the period from the commencement of these cases through April 30, 2002. Any professional who fails to file an application when due shall be ineligible to receive further interim payments of fees or expenses as provided herein until such time as the application is submitted.

e. The pendency of an application or a court order for payment of compensation or reimbursement of expenses, and the pendency of any Notice of

Objection to Fee Statement or other objection, shall not disqualify a Professional from the future payment or compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, monthly interim compensation and reimbursement as provided herein shall bind any party-in-interest or this Court with respect to the allowance of applications for compensation and reimbursement of Professionals.

f. Each member of the Committee in this case shall be permitted to submit statements of expenses and supporting vouchers to counsel for the Committee who shall collect and submit such requests for reimbursement in accordance with the foregoing procedure for monthly and interim compensation and reimbursement of Professionals.

Dated: Chicago, Illinois
January ____, 2002

JAN 25 2002

SUSAN PIERSON SONDERBY
CHIEF BANKRUPTCY JUDGE

Chief Judge Susan Pierson Sonderby
UNITED STATES BANKRUPTCY JUDGE