

E O D AUG 01 2003

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

FILED  
UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS

JUN 31 2003

KENNETH S. GARDNER, CLERK  
TEAM - B

In re: ) Case No. 02-B02474  
) (Jointly Administered)  
KMART CORPORATION, et al., ) Chapter 11  
) Honorable Susan Pierson Sonderby  
) Hearing Date: **TBD**  
Debtors. ) Hearing Time: **TBD**  
) Obj. Deadline: **TBD**

**FOURTH AND FINAL APPLICATION OF SKADDEN, ARPS,  
SLATE, MEAGHER & FLOM (ILLINOIS) AND ITS  
AFFILIATED LAW PRACTICE ENTITIES, COUNSEL TO  
THE DEBTORS-IN-POSSESSION, SEEKING FINAL  
ALLOWANCE AND PAYMENT OF COMPENSATION AND  
REIMBURSEMENT OF EXPENSES UNDER 11 U.S.C. § 330**

Skadden, Arps, Slate, Mcagher & Flom (Illinois) and its affiliated law practice entities ("Skadden"),<sup>1</sup> counsel for Kmart Corporation ("Kmart") and certain of its domestic subsidiaries and affiliates (the "Affiliate Debtors"), debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned cases (the "Reorganization Cases"), submits this fourth and final application (the "Final Application") seeking allowance and payment of compensation and reimbursement of expenses under 11 U.S.C. § 330 for the period from January 22, 2002 through May 6, 2003 (the "Case Period"). Skadden submits this Final Application for (a) allowance of compensation for professional services rendered by Skadden to the Debtors, and (b) reimbursement of actual and necessary charges and disbursements incurred by Skadden in the

---

<sup>1</sup> Capitalized terms not defined herein are defined in the First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-in-Possession, as modified.

rendition of required professional services on behalf of the Debtors. In support of this Final Application, Skadden represents as follows:

INTRODUCTION AND SUMMARY OVERVIEW

1. While it is difficult, in a case as large and complex as these Chapter 11 Cases, to convey in a single narrative the breadth and depth of the resources that primary restructuring counsel must commit in order to assist the debtor to effectively restructure its business and successfully emerge from Chapter 11 protection, the key concept can be summarized in a single word – context. While there are so many "large numbers" in these Reorganization Cases (e.g., the number of employees, customers, vendors, landlords, leases, contracts, motions, adversary proceedings, dollars, claims, etc.) that the prescribed repetitive recitation of numbers and tasks can become almost meaningless, a keen understanding of the context in which these professional services were rendered should assist the Bankruptcy Court and interested parties in evaluating this Final Application in a fair and meaningful manner consistent with the statutory imperatives of the Bankruptcy Code.

2. The "bottom line" is readily understood: Kmart Corporation and its subsidiaries -- the largest retail and real estate bankruptcy reorganization cases ever filed in the American bankruptcy system – successfully reorganized and emerged as a standalone operating company in a little more than fifteen months with the overwhelming support of creditors, emergence lenders and new investors as represented by the elimination of more than \$8 billion of debt, a \$2 billion emergence financing facility, and new investor support of more than \$480 million. This Final Application seeks final approval from the Bankruptcy Court of \$53,745,000 in professional fees and reimbursement of \$4,670,500 in charges and disbursements on behalf of

Kmart's primary restructuring counsel. Subject to approval of the Final Application, this amount is net of \$7,916,066 in voluntary reductions in professional fees, charges and disbursements, which represents an approximate reduction of 12% in the Application and also incorporates a waiver of "success fee" payments provided for in the engagement arrangements. While this Application is the largest filed to date in this District, the amounts incurred clearly fall within the range of fees being incurred in other mega-chapter 11 cases.<sup>2</sup>

---

<sup>2</sup> As discussed in more detail below, professional fees for debtors' counsel in other currently pending mega-Chapter 11 cases include approximately \$81 million in Enron Corporation (first 16 months), \$55 million in Global Crossings, Ltd. (first 14 months), \$46 million in Worldcom, Inc. (first 10 months), \$23.8 million in UAL Corporation (first 7 months), \$21 million in Adelphia Communications (first 9 months) and \$14.2 million in Conseco, Inc. (first six months). Of course, none of these six cases has been successfully concluded to date and each has additional professional fees continuing to accrue during the pendency of the reorganization cases. With respect to representative retail Chapter 11 cases that have been concluded – all of which involved smaller debtors – debtors' counsel received fee awards of approximately \$31.1 million (1992 dollars) in Federated Department Stores, Inc. (an average of \$235,507 for each of its original 132 retail stores); \$23.1 million (1992 dollars) in Ames Department Stores (an average of \$33,958 for each of its original 680 retail stores); \$16.0 million (1998 dollars) in Montgomery Ward Holding Corp. (an average of \$40,705 for each of its original 393 retail stores); and \$14.8 million (1997 dollars) in Bradlees Stores, Inc. (an average of \$108,847 for each of its original 136 retail stores). The amount sought in this Final Application represents \$27,726 for each of Kmart's original 2,114 stores – less than any of the other cases on a per store retail basis (without translating dollars paid in the 1990s into 2003 dollars or adjusting for the \$17.2 million in this Application for conducting the internal investigations and responding to the congressional and federal investigations which was not an element of any of the other retail cases cited here). Finally, a recent study by LoPucki and Doherty (The Determinants of Professional Fees in Large Bankruptcy Reorganization Cases, Journal of Empirical Legal Studies, Jan. 2004, available at <http://ssrn.com/abstract=419280>) suggests that the size of a debtor, as measured by its assets reported on its petition, is the single most important factor in determining the amount of fees and expenses that will be incurred in a debtors' Chapter 11 case. The average ratio of all expenses of

(continued...)

3. What is not apparent from the "bottom line" is the context in which these Reorganization Cases were commenced, prosecuted and successfully concluded. Subject to the constraints of the attorney-client privilege, the documentation of that "context" is the focus of this Introduction and Summary Overview.

4. Imagine that you received a phone call on Monday, January 7, 2002 from the second largest retailer (sales of approximately \$36 billion and assets of approximately \$14.3 billion including 2,114 stores and more than 223 million square feet of real estate across the United States and the Caribbean) and twelfth largest employer (approximately 240,000 employees) in America asking that you stop what you were working on and travel to Troy, Michigan that very afternoon because the management team feared the possibility that the retailer might run out of money and be unable to fund employee payroll and other vital expenses within the month. Imagine that the company's management and financial advisors (the first of four financial advisors that would be retained by the company in the case) told you that the company's liquidity position might be compromised within the month, and that you should marshal resources to help negotiate additional liquidity of as much as \$2 billion dollars and to prepare chapter 11 reorganization cases for possible filing within ten business days if the liquidity crisis could not be averted.

---

<sup>2</sup>(...continued)

all retained professionals in the 48 cases included in the study was approximately 1.9% of reported assets. In these Reorganization Cases, 1.9% of reported assets of \$14.3 billion would yield predicted total retained professional fees and expenses of more than \$270 million – whereas the estimated total professional fees and expenses are less than one-half of that amount.

5. Imagine that, in the midst of around-the-clock preparations, management meetings, board meetings, lender meetings and due diligence meetings, five days later on Saturday, January 12, 2002, you are given a copy of an anonymous letter addressed to the Securities and Exchange Commission dated January 9, 2002, purported to be from employees that had been directed to make improper entries in the books and records of the company and that, two days later on Monday, January 14, 2002, you are instructed by the Audit Committee of the Board of Directors to conduct an internal investigation into the allegations contained in the letter. Imagine that you will receive 81 additional such letters over the next fifteen months -- each of which will have to be shared with government authorities, statutory committees and prospective lenders and investors -- and many of which would delay and expand an internal investigation that would lead to 373 interviews of former and current company employees; review and analysis of more than 1.9 million pages of documents; coordination with at least three separate, independent congressional and federal administrative investigations; coordination of the internal investigation with at least six firms of legal and financial advisors representing creditors and shareholders; multiple restatements of the company's financial statements; and the replacement of substantially all of the top three tiers of the company's management.

6. Imagine that on Monday, January 21, 2002 -- the Martin Luther King Holiday -- you are in New York City meeting with the Company's directors, officers and lenders to finalize what preparations could be made in nine business days to seek Chapter 11 reorganization protection for the largest retail case in history, including the final negotiation of a term sheet (in lieu of loan documents, at least temporarily given timing constraints) for a \$2 billion DIP financing agreement -- the largest DIP financing facility in American history -- as well as a

communications plan that would promise the company's customers, employees, vendors and stakeholders a "fast track" Chapter 11 reorganization to be completed by June, 2003 in 18 months or less.

7. Imagine that on Tuesday, January 22, 2002 – the tenth business day after the initial phone call - you were before a bankruptcy court in Chicago seeking the entry of 29 first day orders after filing Kmart Corporation and 37 of its affiliate debtors for chapter 11 protection in an herculean effort to stabilize a business that was seriously jeopardized on myriad fronts including accounting, financial, liquidity, management, operational and vendor issues. Imagine that among the orders sought and entered by the bankruptcy court were critical vendor orders that averted the continued suspension of shipments from the company's single largest supplier and the distributor of substantially all of its food and consumables system-wide as well as assured the continued supply of music from its sole supplier of CDs and the continued support of key advertising vendors, import vendors, and dairy suppliers, among others.

8. Imagine that eight business days later, you would appear before hundreds of irate creditors in an organizational meeting conducted by the United States Trustee that would result in the formation of two separate creditors committees – although bondholder representatives for the company's 175 bond issues (other than Indenture Trustees) would refuse to serve on the committees for another eight months (thus complicating early emergence reorganization discussions). Imagine that the statutory committee mix would be further complicated by the subsequent appointment of an equity holders committee, such that the company would need to coordinate among at least six lead financial advisory and law firms representing the three committees.

9. Imagine that on March 11, 2002 – just six weeks into the Chapter 11 reorganization and following a profound lack of creditor confidence – you would assist the Company in announcing the departure of the entire executive management team and the appointment of a new chief executive officer (the second of three that you would serve in the first twelve months of the Reorganization Cases), a new president and chief operating officer, a new chief financial officer and a new treasurer – thus mitigating against the appointment of a trustee or examiner in the Reorganization Cases (neither of which would ultimately ever be sought by any party in the Bankruptcy Court or be appointed).

10. Imagine that on that same day that you had to advise the new chief financial officer and treasurer that the accounting portion of the ongoing internal investigation would have to be completed and audited financial statements would have to be filed with the SEC within approximately 60 days – on May 15, 2002 – to avert defaults in the company's \$2 billion DIP facility and maintain necessary trade support for the Debtors' reorganization efforts, including shipping of fall orders and acceptance of final holiday orders for the 2002 holiday season. Imagine that at approximately the same time that the company's executive management team was being replaced, you had to obtain bankruptcy court authority to extend at least into 2003 the time to assume or reject just over 5,000 real estate leases involving 3,235 landlords and subtenants including litigating contested hearings with over 100 landlords involving approximately 565 leases. Also imagine that you would have to concurrently seek authority to close 283 underperforming stores (more stores than either Bradlces or Fedcrated had at the commencement of either of their reorganization cases) and obtain authority to dispose of both real estate and

inventory for which the company would eventually realize approximately \$934 million. Imagine that each of these tasks is actually accomplished concurrently.

11. Imagine that, at the same time you are dealing with management succession, store closings, asset dispositions and investigations during the early months of the Reorganization Cases, you learn that new investors are acquiring hundreds of millions of dollars of bondholder, bank and trade claims. Imagine that less than six months after the Reorganization Cases are commenced, you would begin informal discussions about how the company and the new investors might work together consensually consistent with the company's initial self-imposed "fast-track" timetable for early emergence. Imagine that these summer discussions would lead to a post-Labor Day, 2002 written mutual cooperation and standstill agreement with the new owners of large amounts of bank and bondholder claims seeking and obtaining membership on one of the two official creditors committees – which would begin to harmonize the relationships of the statutory committees with the company and facilitate reorganization and emergence discussions throughout the fall and into the holiday season.

12. Imagine that on Friday, January 24, 2003 – two days after the first anniversary of the Petition Date and within weeks of the company's first holiday season in Chapter 11 – you would file a disclosure statement and plan of reorganization that would include a committed \$2 billion emergence financing facility, an investment agreement from new investors, summary findings on the substantially completed internal investigation which had been coordinated with and supported by the company's statutory committees, and a framework for emergence from Chapter 11 as much as a full calendar quarter ahead of the company's original 18 month "fast-track" timetable. Also imagine that, at the same time, you begin implementation of a 2003 store



closing program that would lead to the closing of an additional 316 closing stores and the disposition of associated inventory and real estate interests for which the company would realize approximately \$1.18 billion and that you help the company address myriad contractual relationships with key vendors, including the rejection of the contract with the company's largest vendor and principal supplier of food and consumables as well as related transition planning.

13. Imagine that you obtain confirmation of the reorganization plan after working through over 60 objections to the disclosure statement and 188 objections to the reorganization plan – and that the company emerges from Chapter 11 protection on May 6, 2003 – less than 15 ½ months from the Petition Date and well in advance of the original 18 month "fast track" emergence timetable.

14. Also imagine that during the fifteen month period, you would deal with more than 55,000 claims, 23,000 executory contracts (including leases), 3,000 mechanics liens, 693 reclamation claims, and 2,100 utility providers and related deposit demands; imagine that you would prosecute or defend against more than 1,000 motions presented to the Bankruptcy Court (and dozens of adversary proceedings and appeals to higher courts), as well as address more than 11,000 docketed items in the Reorganization Cases; imagine that you would serve over 1.1 million persons of the Bar Date and over 1,100 parties on the Master and 2002 Service Lists; and imagine that you would review and respond (as appropriate) to more than 34,200 letters, emails and telephone calls.

15. All of this imagination is, of course, the actual reality of these Reorganization Cases and provides at least some basic context against which this Application should be evaluated. That notwithstanding, Skadden has endeavored throughout this Application to place

into some perspective the amount of professional compensation sought for various categories of tasks and other matters in order to provide additional context. While these matters are described throughout the Application as part of detailed narratives, certain matters should be highlighted as follows:

- A total of \$6,366,481 in fees were incurred in connection with the Debtors' initial portfolio of 3,050 leases and 1,960 subleases and their 2,335 landlords and 900 subtenant relationships with respect to store closings, lease assumptions, lease rejections and related activities; the fee amount is less than half of the annual revenue generated by a typical, single Kmart store;
- A total of \$4,445,806 in fees were incurred in connection with the closure of 599 stores, the assumption and assignment of approximately 209 leases, the termination of an additional 36 leases and the sale of eight fee properties for total consideration in excess of \$197.6 million; the fee amount is equal to nine days of the \$500,000 in daily lease carrying costs that were avoided in connection with disposition of the 2003 closing stores, and is 2.3% of the total consideration received.
- A total of \$2,862,719 in fees were incurred in connection with case administration matters, which included responding to (i) an estimated 34,200 voicemail hotline, e-mail, and other general correspondence (an average of 56 items per day) and (ii) a total of 11,361 docket items (an average of 24 per day); the fee amount is an average of \$252 for each of these docket items;
- A total of \$1,947,450 in fees were incurred in connection with assisting the Debtors in their review, assumption, and rejection of all executory contracts, including a \$4 billion per year contract with Fleming; the fee amount is an average of \$108 for each of the Debtors' approximately 18,000 non-real estate executory contracts;
- A total of \$1,493,965 in fees were incurred in connection with negotiating, documenting, and monitoring compliance with a \$2 billion debtor-in-possession financing facility and a \$2 billion exit financing facility, in each case, the largest ever afforded a debtor-in-possession;
- A total of \$1,487,585 in fees were incurred in connection with claims reconciliation matters initiated during the Chapter 11 Cases; the requested fee is 1.4% of the approximately \$1.1 billion reduction in Fleming's rejection claim negotiated in part through the assistance of Skadden, and is one-tenth the face amount of approximately \$12.8 million in late proofs of claim that were

disallowed, which in turn is approximately equal to the value of distributions that would have been made based on the estimates contained in the Disclosure Statement;

- A total of \$1,060,339 in fees were incurred in connection with defending against approximately 450 lift stay motions – an average of \$2,360 per motion – and in developing global procedures for 8,419 personal injury claims – an average of \$126 per claim;
- A total of \$894,769 in fees were incurred in connection with 693 reclamation claims in the face amount of \$208 million and involving 300,000 separate invoices; the fee amount is 13% of the \$6.6 million in savings realized by the Debtors with respect to those reclamation vendors who elected the partial payment plan formulated by the Debtors with the assistance of Skadden;
- A total of \$775,752 in fees were incurred in drafting the Disclosure Statement, responding to 60 objections to the Disclosure Statement, and negotiating resolutions to 82 motions filed under Rule 3018;
- A total of \$533,872 in fees were incurred in connection with secured claims matters, including Skadden's efforts in obtaining approval of a global procedure for resolving 3,000 mechanics' liens for amounts less than the lien claims that resulted in savings to the estates of approximately \$25.5 million; and
- A total of \$474,964 in fees were incurred in connection with negotiation of deposits requested by 250 of the Debtors' utilities; the fee amount is 2% of the \$24 million in savings realized during these Reorganization Cases in utility deposits that the utilities initially had demanded, but that were reduced as a result of negotiations.

#### BACKGROUND

16. On January 22, 2002 (the "Petition Date"), Kmart and each of the Affiliate Debtors filed voluntary petitions in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 – 1330, as amended (the "Bankruptcy Code").

17. On the Petition Date, this Court entered orders providing for the joint administration of the Reorganization Cases, and these Reorganization Cases were at that time consolidated for procedural purposes only. The Debtors thereafter operated their businesses and

managed their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

18. On January 31, 2002, the United States Trustee (the "Trustee") appointed the Official Committee of Unsecured Creditors (the "Creditors' Committee") and the Official Financial Institutions' Committee (the "Financial Institutions' Committee") in these Reorganization Cases. On June 14, 2002, the Trustee appointed the Official Committee of Equity Holders (the "Equity Committee"). The Creditors' Committee, the Financial Institutions' Committee, and the Equity Committee are referred to collectively herein as the "Statutory Committees."

19. On April 23, 2003, this Court entered an order (the "Confirmation Order") confirming the First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliate Debtors and Debtors-in-Possession, as modified (the "Plan"). The Plan became effective on May 6, 2003.

20. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334 and Article 10.2 of the Plan. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Reorganization Cases in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

21. The statutory predicates for the relief requested herein are Section 330 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure.

## RETENTION OF SKADDEN

22. On the Petition Date, the Debtors applied to this Court for an order approving the retention of Skadden as their restructuring and bankruptcy counsel (the "Retention Application") to perform legal services under a general retainer that was necessary to enable the Debtors to faithfully execute their duties as debtors-in-possession. On January 25, 2002, this Court entered an order (the "Retention Order")<sup>3</sup> authorizing the Debtors to employ Skadden as their counsel under the terms set forth in the Retention Application.<sup>4</sup>

23. In the Retention Application, the Debtors disclosed that Skadden's fees for professional services are based on its guideline hourly rates, which are periodically adjusted. The Debtors also disclosed in the Retention Application that Skadden's charges and disbursements are invoiced pursuant to Skadden's Policy Statement Concerning Charges and Disbursements, a copy of which is attached to the Engagement Agreement. Certain charges and disbursements are not separately charged under the bundled rate structure as described in the Retention Application.

24. Other than an arrangement between Skadden, Arps, Slate, Meagher & Flom (Illinois) and its affiliated law practices and their members, there is no agreement or understand-

---

<sup>3</sup> A copy of the Retention Application, the supporting affidavit, and the Retention Order are attached hereto as Exhibit A. These materials include factual information regarding the experience and standing at the bar of certain of Skadden's senior attorneys.

<sup>4</sup> The Retention Order incorporates the terms of an engagement agreement dated January 7, 2002 (the "Engagement Agreement"), between Skadden and the Debtors, a copy of which is attached as Exhibit A to the affidavit supporting the Retention Application

ing between Skadden and any person for the sharing of compensation to be received for services rendered in this case.

#### FEE PROCEDURES AND MONTHLY FEE STATEMENTS

25. On January 22, 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"). The Administrative Order governed the filing of monthly fee statements and interim fee applications. Skadden has properly filed all interim fee applications and distributed all monthly fee statements required to be filed and/or distributed pursuant to the Administrative Order, as discussed in more detail below. Pursuant to Article 10.2(a) of the Plan, Skadden now is submitting this Final Application to the Debtors as well as to the Debtors' postpetition lenders, counsel to the Statutory Committees, and the Trustee.

26. In order to minimize costs to the Debtors' estates and avoid duplicative efforts in the review of fee applications filed in these Reorganization Cases, the Debtors, the Statutory Committees, and the Trustee agreed to the formation of a joint fee review committee (the "Fee Review Committee") to review, comment on and, if necessary, object to the various fee applications filed in these Reorganization Cases. On March 20, 2002, this Court entered a final administrative order authorizing the establishment of the Fee Review Committee. In addition, on May 2, 2003, this Court approved the Fee Review Committee's retention of Stuart, Maue, Mitchell & James Ltd. to assist the Fee Review Committee with its review of the various fee applications submitted in these Reorganization Cases.

27. Prior to and during the Reorganization Cases, the Debtors have worked with the Statutory Committees and the Trustee to establish a budgeting and monthly fee review protocol for these Reorganization Cases. The Fee Review Committee has met and agreed to follow an approved protocol (the "Fee Review Protocol") in these Reorganization Cases. One aspect of the Fee Review Protocol institutes a series of procedures (the "Budget Procedures") with regard to the submission and review of budgets (each, a "Budget") for professionals working on these Reorganization Cases.

28. On September 19, 2002, this Court entered an omnibus order granting in full Skadden's First Interim Fee Application (Docket No. 4001) for payment of fees and reimbursement of expenses in the amounts of \$9,476,673 for fees and \$1,170,366 for expenses incurred during the period January 22, 2002 to April 30, 2002 (the "First Application Period"). There were no Budgets prepared by any professionals that were addressed by the Fee Review Committee in connection with the First Interim Applications because the Fee Review Committee was not formed until the last month of the First Application Period, shortly after this Court's establishment of the Fee Review Committee.

29. On December 19, 2002, this Court entered an omnibus order granting in full Skadden's Second Interim Fee Application (Docket No. 6833) for payment of fees and reimbursement of expenses in the amounts of \$12,608,228 for fees and \$1,109,854 for expenses incurred during the period May 1, 2002 to August 31, 2002 (the "Second Application Period"), subject to a holdback of 10% of the requested fees. The amount of fees sought and approved in Skadden's Second Interim Fee Application were consistent with Skadden's proposed budget for

this period, which the Fee Review Committee approved and which was filed with this Court at Docket Number 7562.

30. On April 9, 2003, Skadden filed its Third Interim Fee Application (Docket No. 10296) requesting \$15,162,565 in fees and \$1,164,318 in expenses incurred during the period September 1, 2002 to December 31, 2002 (the "Third Application Period"). The amount of fees sought in Skadden's Third Interim Fee Application was consistent with Skadden's proposed budget for this period, which the Fee Review Committee approved. The professionals retained in these Reorganization Cases agreed not to present their Third Interim Fee Applications to this Court for approval separate and apart from this Courts' approval of the Final Applications submitted in these Reorganization Cases.

31. This is Skadden's Fourth and Final Application for the fees and expenses requested during the First Application Period, the Second Application Period, the Third Application Period and the Period from January 1, 2003 through May 6, 2003 (the "Fourth Application Period"). As a result of its efforts during the Fourth Application Period and the May 1, 2003 through May 6, 2003 stub period, Skadden seeks approval of \$16,692,932 in fees and \$1,225,942 in expenses. Monthly statements for the Fourth Application Period, separated by matter number, are attached hereto as Exhibit E.<sup>5</sup> Monthly statements for the First Applica

---

<sup>5</sup> There was not a formal Budget reviewed with or approved by the Fee Review Committee for Skadden for the Fourth Fee Application period due to the unusual demands of the Debtors' fast-track emergence timetable executed during this period. By way of comparison, however, Skadden's aggregate professional fees for the Fourth Fee Application Period (excluding the additional stub period involving May, 2003) is within 3% of incurred professional fees for the Third Application Period, notwithstanding that the Fourth Application Period covers the entire disclosure statement, plan of reorganiza-

(continued...)



tion Period, the Second Application Period and the Third Application Period were submitted in appendices accompanying the First Interim Fee Application, the Second Interim Fee Application and the Third Interim Fee Application, respectively.<sup>6</sup>

#### OVERVIEW OF KMART

32. As of the Petition Date, Kmart was ranked number 36 on Fortune's list of 500 companies and was a member of the Fortune Global 100. It is the successor to the business developed by its founder, S.S. Kresge, who opened his first store in 1899. The first store using

---

<sup>5</sup>(...continued)

tion and emergence process (including the procurement of exit financing), the 2003 store closing and related asset disposition program, the renegotiation and/or termination of a number of the Debtors' most material contracts (e.g., Fleming), and the formal discovery and completion phases of the stewardship investigation.

<sup>6</sup> Pursuant to Article 10.2(b) of the Plan and paragraph 23 of the Confirmation Order, Skadden estimated that the statement for the stub period through May 6, 2003 would be in the amount of \$1,050,000 (inclusive of the estimated Fee Holdback of \$87,500 and after extending financial accommodations of approximately \$55,000 of incurred professional fees as an accommodation in connection with the estimate). Based on the estimate, the Debtors paid to Skadden on the Effective Date the amount of \$962,500 (which was net of the 10% Fee Holdback) and deposited the amount of \$87,500 into the Holdback Escrow Account. Based on the actual fees, charges and disbursements incurred, the Effective Date payment to Skadden should have been \$925,266 and the payment on account of May, 2003 to the Holdback Escrow Account should have been \$92,127. As a result, Skadden has held the surplus paid to it of \$37,234 pending the Court's ruling on this Final Application. Accordingly, if this Final Application is approved, there will be an amount returnable to the Company from the Fee Escrow Holdback (assuming the Final Application is approved as submitted) in the amount of \$32,607 (e.g., the sum of the \$37,234 already paid to Skadden that will not need to be paid again from the Holdback Escrow Account less the amount of \$4,627 representing the underfunding of the Holdback Escrow Account based on Skadden's earlier estimate).

the Kmart name was opened in March 1962. Since that time, Kmart has become the nation's third largest discount retailer and the fourth largest general merchandise retailer.

33. Kmart focuses its merchandising and marketing approach on its brand positioning, pricing strategies, presentation and productivity to build customer loyalty and increase shopping frequency. Kmart features popular national brands at competitive prices combined with new, distinct brands to differentiate itself in the marketplace. Kmart is continually growing its exclusive private brand product offerings, which is highlighted by agreements with nationally recognized names such as Joe Boxer, Disney, and an extended contract for the exclusive sale of Martha Stewart home and garden products. Other high quality private brand collections available exclusively at Kmart include Sesame Street, Jaclyn Smith, Kathy Ireland, Thalia, Route 66 and Curtis Mathes.

34. As of the Petition Date, Kmart operated 2,114 stores, primarily under the Big Kmart or Kmart Supercenter format, in all 50 United States, Puerto Rico, the U.S. Virgin Islands and Guam. Its stores are generally one-floor, free-standing units ranging in size from 40,000 to 190,000 square feet. Most of Kmart's store locations are leased from unrelated third parties and comprised, on the Petition Date, more than 200 million square feet of commercial real estate. As of the Petition Date, Kmart utilized 14 hard-line and four soft-line distribution centers, totaling 23 million square feet of warehouse space, and had a dedicated fleet of more than 600 tractors and 2,700 trailers.

35. As of the Petition Date, Kmart had approximately 240,000 associates worldwide and was one of the top twelve employers in the United States with roughly \$5.2

billion in annual payroll and benefits. Kmart has relationships with more than 4,000 vendors worldwide and is one of the country's largest purchasers of products.

36. For the twelve months ended January 31, 2002, Kmart had consolidated net sales of approximately \$36 billion. Kmart administered approximately \$14.3 billion of assets at book value and reported total liabilities of roughly \$10 billion, including over \$8 billion of liabilities subject to compromise. For the year ended January 29, 2003, Kmart reported consolidated sales of approximately \$30.8 billion, which reflected, in part, the closure of 283 stores in the Spring of 2002.

37. During the initial stages of these Reorganization Cases, the Debtors announced their intention to emerge from Chapter 11 within 18 months. On January 24, 2003, the Debtors filed the Plan and the companion Disclosure Statement with respect to the Plan (the "Disclosure Statement"). At a hearing before this Court on February 25, 2003, this Court approved the Disclosure Statement and procedures and materials to be employed in the solicitation of votes with respect to the Plan and the confirmation thereof. The vote solicitation process commenced on March 7, 2003. On April 14, 15, 21 and 22, 2003, this Court held a Plan confirmation hearing. This Court confirmed the Plan on April 23, 2003 and the Debtors emerged from Chapter 11 on May 6, 2003 – approximately 15½ months after the Petition Date.

#### SIGNIFICANT EVENTS DURING THE REORGANIZATION CASES

38. Upon the filing of the petitions, Kmart became the largest retailer to commence Chapter 11 proceedings in the history of the American bankruptcy system. Collectively, these Reorganization Cases also represent one of the largest Chapter 11 filings of all time. The Debtors' schedules and statements contain over 10,000 pages of information, listing

over 5,000 leases and subleases and over 4,000 executory contracts. Claim and bar date notices were mailed to over 1.1 million people in every state in the country. As of May 6, 2003, a total of 11,361 items had been docketed in these Reorganization Cases. That is an average of over 24 items per day since the inception of this case, including weekends and holidays.

39. As of May 6, 2003, there were 1,100 parties on the service lists in these Reorganization Cases. During the Reorganization Cases, there have been 14 omnibus and 14 significant off-omnibus hearings at which over 1,000 matters were presented. During the Reorganization Cases, Skadden has logged and responded to over 34,200 letters, e-mails, and telephone calls to its dedicated Kmart voicemail box.

40. In undertaking these Reorganization Cases, the primary goal of the Debtors and their advisors, including Skadden,<sup>7</sup> has been to minimize the effect of these proceedings on the Debtors' operations and finances in order to enable the Debtors' management to focus, as much as possible, on a successful reorganization and the development of a business plan. To that end, Skadden has assisted the Debtors in several key areas during the Reorganization Cases.

---

<sup>7</sup> Skadden is one of a team of skilled professionals retained by the Debtors to assist in their reorganization efforts. Skadden's assistance to the Debtors during the Reorganization Cases generally was part of a collaborative effort with the Debtors' other retained professionals, including Abacus Advisory & Consulting Corp., LLC, ChainLinks Retail Advisors, Inc., DJM Asset Management, LLC, Miller, Buckfire, Lewis, LLC, PricewaterhouseCoopers, LLP and Rockwood Gemini Advisors. Certain principals and employees of JA & A Services, LLC, n/k/a AP Services, LLC, an affiliate of Jay Alix & Associates, n/k/a Alix Partners, LLC, also provided significant assistance to the Debtors during the Reorganization Cases.

A. Short Term Liquidity

41. Immediately prior to the Petition Date, the Debtors, working closely with Skadden attorneys, were able to procure a commitment for \$2 billion in debtor-in-possession financing from JPMorgan Chase Bank and a syndicate of financial institutions. This new credit facility – the largest debtor-in-possession financing facility ever presented to a United States Bankruptcy Court for approval – substantially eliminated the concerns regarding the Debtors' short term liquidity, thereby allowing the Debtors to place and receive orders for the merchandise necessary for their stores.

B. Constituent Relationships

1. Vendors

42. Additionally, with Skadden's assistance, the Debtors moved aggressively to stem the tide of vendor discontent. Prior to the commencement of these Reorganization Cases, many of the Debtors' major vendors had stopped shipping goods on credit. Many more threatened to ship only on cash-in-advance while others had stopped shipping altogether. The Debtors' consignment vendors were growing increasingly wary of keeping millions of dollars of their goods in the hands of a company with uncertain short-term cash flow prospects.

43. However, many vendors derived great comfort from the liquidity created by the Debtors' new credit facility, including the vendor lien program developed with the assistance of Skadden. The Debtors, with the assistance of Skadden, further improved vendor relations by seeking and obtaining relief from this Court (i) allowing the Debtors to resolve vendor reclamation claims, (ii) allowing the Debtors to pay certain critical vendors, (iii) allowing the Debtors to establish a vendor return program, (iv) establishing a clear

PACA/PASA claims procedure, and (v) establishing reclamation procedures whereby vendors were able to assert administrative claims for certain goods shipped just prior to the Petition Date.

2. Customers

44. As evidenced by the declining sales experienced by the Debtors during the period immediately prior to the Petition Date, the Debtors' customers had become increasingly disenchanted with the customer experience offered at Kmart stores. Thus, it was imperative that the reorganization process did not inconvenience or negatively influence the Debtors' customers. In response to these concerns, the Debtors, with the assistance of Skadden, sought and received relief that allowed Kmart stores to continue to honor customer obligations, including warranties, gift certificates, gift cards, and lay-away plans in the ordinary course of business.

3. Employees

45. Prior to the commencement of these Reorganization Cases, the Debtors suffered from high employee attrition rates due to employee concerns about the viability of Kmart as a long-term employer. In an effort to reverse this trend, the Debtors, with Skadden's assistance, sought and received employee-related relief from the Bankruptcy Court, including the authority to pay prepetition wages and benefits, authority to pay employee severance, and authority to implement a broad-based employee retention program to stem the employee exodus during the critical stabilization period. The program sought as its goal to retain almost 10,000 employees, and was one of the most comprehensive of its kind that has ever been approved in a bankruptcy case.

4. Creditors

46. From the outset of these Reorganization Cases, the Debtors have sought to establish and maintain open and productive relationships with their creditors, including the Creditors' Committee and the Financial Institutions' Committee. The Debtors prepared for and participated in the formation meeting of the Statutory Committees, and met numerous times during the Reorganization Cases, including at formal monthly meetings that included presentation and other materials that formed the basis of discussion and review. Skadden played an integral role in these efforts, coordinating with Committee counsel with respect to most of the major initiatives detailed in this Final Application and assisting the Debtors in providing the Statutory Committees with detailed information and analysis of the Debtors' operations and the progress of these Reorganization Cases. As a result of these efforts, Skadden and counsel for the Statutory Committees have been able to minimize the number of contested matters before the Court.

C. Disposition of Underperforming Assets

47. As part of their reorganization efforts, the Debtors, in their business judgment, examined all of their stores, real estate holdings, leases, and other assets in order to determine those that would provide value for their go-forward operations, and those that could be eliminated and the proceeds used in their restructuring efforts. In pursuing these goals during these Reorganization Cases, the Debtors, with Skadden's assistance, sought and obtained Court approval of store closing procedures to wind down 283 stores in 2002 and another 316 stores in 2003, conduct store closing sales, reject certain leases, and conduct auctions to sell the Debtors'

other leasehold interests in accordance with Court approved bidding procedures. These estates saved hundreds of millions of dollars as a result of these efforts.

48. One of the most significant areas of the Debtors' efforts during the Reorganization Cases relates to one of the Debtors' most important assets: their owned and leased real estate. During the Reorganization Cases, Skadden assisted the Debtors by defending motions on the "go-dark," issue, which allowed the Debtors to obtain value through the assignment of certain leases (instead of allowing landlords to terminate the leases and take back the space). Skadden also worked closely with the Debtors to maximize estate funds by disposing of hundreds of leases of closed stores and other properties. Skadden also played a significant role in defending the Debtors' real estate interests against various motions to compel the Debtors' to perform lease obligations, as well as numerous motions to modify the automatic stay.

D. Claims Resolution Procedures

49. Skadden also assisted the Debtors during the Reorganization Cases in obtaining approval from this Court of procedures to assist the Debtors in resolving claims. Thus, Skadden assisted with the development and approval of global personal injury claims resolution procedures designed to address up to 20,000 personal injury claims that had been asserted against the Debtors as of the Petition Date. The same is true of motions by mechanics lien claimants, whose claims were dealt with pursuant to their own resolution process, thereby assisting the Debtors and these estates in resolving the roughly 3,000 known mechanics lien claims asserted in these Reorganization Cases.



50. As of May 6, 2003, approximately 55,822 claims were filed in these Reorganization Cases. Prior to emergence from Chapter 11 on that date, Skadden assisted the Debtors in the process of preliminarily reviewing, and, where necessary, objecting to prepetition claims. As of such date, the Debtors had filed six omnibus objections to claims, objecting to a total of 19,730 claims. These efforts ultimately assisted the Debtors in obtaining entry of an omnibus order acknowledging 12,472 claims, thereby allowing distributions of stock and cash to such holders on June 30, 2003, which was the first distribution date under the Plan.

E. Resolutions of Reclamation and Utility Claims

51. Also during the Reorganization Cases, the Debtors, with assistance from Skadden, resolved reclamation claims asserted by vendors and deposit demands made by utilities. Although over 2,500 reclamation demands initially were filed in the total amount of over \$1.1 billion, the claims were winnowed down to 693 entities filing non-duplicate claims in the face amount of \$208 million. All but two of these reclamation demands have now been resolved. Similarly, all of the roughly 250 utility deposit demands were resolved, with the original demands being reduced from \$43 million to \$19 million. Utility service thereby was successfully preserved through the Debtors' 2,100 utility providers nationwide.

F. Investigation

52. Skadden also devoted significant resources to the investigation of accounting, executive stewardship, and related issues conducted by the Debtors, an investigation necessitated by over 80 anonymous letters and overlapping investigations being conducted by several governmental authorities – including criminal investigations being conducted by several governmental authorities. The investigation was conducted on a joint interest basis with the

Debtors' three Statutory Committees pursuant to the terms of, among other things, an agreed order entered by this Court that granted the Debtors subpoena powers under Rule 2004 of the Federal Rules of Bankruptcy Procedure. The investigation was conducted at the same time that the Securities and Exchange Commission, the Department of Justice and the Federal Bureau of Investigation, and the United States House of Representatives Committee on Energy and Commerce, among others, were conducting separate and independent investigations and inquiries regarding these matters. The Debtors cooperated with these agencies in their investigations.

53. The joint investigation pursued by the Debtors with the Statutory Committees avoided the distinct possibility of appointment of a Chapter 11 trustee or examiner, which would have cost the estates incalculable dollars in additional fees and damage to the business as it tried to restructure its affairs. As described in more detail below, Skadden professionals reviewed 1,900,000 pages of documents and e-mails; collected 730,000 pages of documents for production to government agencies; and conducted one or more interviews of 373 former and current employees during the Reorganization Cases in furtherance of the investigation. The Debtors completed this investigation in early 2003, and continue to cooperate with government authorities on their investigations.

G. The Plan of Reorganization

54. Throughout the Chapter 11 Cases, the Debtors focused first and foremost on their prospective emergence from Chapter 11. Skadden worked closely with the Debtors on all aspects of this process. One of the most important aspects of this process was the critical decision – made in the first days of the Chapter 11 with substantial input and development by

Skadden – to consummate a restructuring and emerge from Chapter 11 within 18 months. This "fast-track" timeline was announced at the initial meeting of creditors in January 2002, and was aggressively pursued by the Debtors its advisors from that time through confirmation and ultimate consummation of the Plan on May 6, 2003 – approximately 3 months ahead of the originally contemplated timeline.

55. This timeline was unique among Chapter 11 cases of other large retailers and undoubtedly contributed to the Debtors' successful emergence from Chapter 11. After the initial launch phase of the Chapter 11, many constituencies expressed doubt about the feasibility of this timeline, especially since it contemplated only one holiday season in Chapter 11 during which the Debtors could evaluate the performance of their store portfolio (the Chapter 11 cases of many other retailers spanned two, three and sometimes four holiday seasons). However, the Debtors and their advisors consistently pressed ahead with this aggressive emergence timetable, certain that a prolonged stay in Chapter 11 would be inimical to the Debtors' business and hence, would not be in the best interests of the Debtors' creditors. By emerging as quickly as possible, after a thorough analysis of the Debtors' performance during the 2002 holiday season, the prospects for a successful business turnaround were maximized.<sup>8</sup>

56. Of equal significance, the Debtors' original, "fast-track" plan to emerge from Chapter 11 substantially limited the administrative costs – most notably, professional fees – of these bankruptcy cases. A case as large and complex as these Reorganization Cases, with

---

<sup>8</sup> Post-emergence investors appear to be bullish on Kmart's future prospects. On July 29, 2003, the Debtors' new common stock was trading at \$23.15, which is 71% above its emergence trading price of \$13.55 and the midpoint valuation of the estimated equity value contained in the Disclosure Statement.

the exceptionally large volume of leases, vendors, employees, and other business issues, all of which were over-shadowed by multiple government investigations, was destined to require significant resources from a number of professionals in addition to those retained by the Debtors: there were three Statutory Committees in these Reorganization Cases, each with separate counsel and separate financial advisors. Had these Reorganization Cases been more prolonged than originally envisioned, professional fees would have continued mounting at a rate of several million dollars per month. Had these Reorganization Cases spanned two holiday seasons, as is more typical in large retail Chapter 11 cases, professional fees would easily have been much higher than the amounts actually sought.

57. In order to implement the foregoing strategy, Skadden assisted the Debtors in numerous activities, all of which were directed ultimately towards a quick and successful emergence from Chapter 11. Specifically, Skadden assisted in reviewing unexpired contracts and leases in order to assist the Debtors in making determinations regarding assumption or rejection of such agreements. With Skadden's assistance, the Debtors were able to procure a \$2 billion exit financing facility from General Electric Capital Corporation, GECC Capital Markets Group, Inc., Fleet Retail Finance, Inc., Fleet Securities, Inc., Bank of America, N.A., and Banc of America Securities, LLC to finance their post-emergence business needs. In addition, Skadden assisted the Debtors with negotiating and entering into an investment agreement with ESL Investment, Inc. and Third Avenue Trust (collectively, the "Plan Investors"), pursuant to which the Plan Investors agreed to make a substantial investment in the reorganized Debtors. Finally, Skadden and several of the Debtors' professionals drafted the Plan and the accompanying Disclosure Statement, assisted in soliciting votes on the Plan, and responded to 188

objections to the Plan, resolving or otherwise disposing of all but six of such objections without the need for litigation. The Plan represented the culmination of extensive negotiations among the Debtors, the Statutory Committees, the Plan Investors, and parties objecting to the Plan, among others. Following a four day confirmation hearing, on April 23, 2003, this Court entered an order confirming the Debtors' Plan and, on May 6, 2003, the Debtors successfully emerged from Chapter 11.

#### REQUESTED FEES AND REIMBURSEMENT OF EXPENSES

58. Skadden has played an important role in advising the Debtors with respect to implementing their restructuring strategy and responding to the issues in these Reorganization Cases. As a result of its efforts during the Reorganization Cases, Skadden now seeks allowance of \$53,745,000 in fees calculated at the applicable guideline hourly billing rates of the firm's personnel who have worked on the Reorganization Cases, and \$4,670,500 in charges and disbursements actually and necessarily incurred by Skadden while providing services to the Debtors during the Reorganization Cases.

59. This Final Application reflects a voluntary reduction by Skadden in connection with each monthly statement in the aggregate amount of \$6,822,548 in fees and \$597,913 in expenses, plus an additional voluntary reduction in the amount of \$302,488 in fees in connection with each Interim Fee Application, plus an additional voluntary reduction in the amount of \$193,117 in fees in connection with this Final Application to reflect, among other items, the elimination of all fees related to any timekeeper billing less than \$5,000 during any particular Application Period and less than five hours during the Reorganization Cases, elimination of any matter with a fee total of less than \$5,000 during any particular Application

Period, and elimination of any matter with a fee total of less than \$15,000 for the Reorganization Cases. Accordingly, including the voluntary client accommodations in connection with each monthly statement, Skadden is voluntarily reducing its fees by \$7,318,153 or approximately 12%.

60. In staffing this case, in budgeting and incurring charges and disbursements, and in preparing and submitting this Final Application, Skadden has been mindful of the need to be efficient while providing full and vigorous representation to the Debtors. Skadden also has been guided by 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 in detail herein, Skadden believes that the requests made in this Final Application comply with this Court's standards in the context of the unique circumstances surrounding this unusually large and complex case.<sup>9</sup>

61. Finally, Skadden believes that the fees and expenses requested herein are commensurate with the fees of debtor's counsel incurred in other large retail reorganization cases. For example, in In re Federated Department Stores, Inc., (Case Number 1-90-00130), which was commenced on January 15, 1990 in the United States Bankruptcy Court for the

---

<sup>9</sup> Skadden believes that the amounts requested in this Final Application are reasonable in relation to the services rendered. The amounts requested are already reduced to reflect the client accommodations described herein, which include a voluntary fee, charge, and disbursement reduction in excess of \$7,916,066. To the extent that a party objects to this Final Application, Skadden reserves the right to recapture such client accommodations and seek up to the full amount of fees actually incurred in connection with this engagement.

Southern District of Ohio, Federated paid its legal advisors \$31,086,900 in fees and expenses, for an average fee per store, for each of its 132 stores, of approximately \$235,507. In In re Bradlees Stores, Inc. (Case Number 95 B 42777), which was commenced on June 23, 1995 in the United States Bankruptcy Court for the Southern District of New York, Bradlees Stores entered Chapter 11 with 136 retail stores. Its legal advisors were paid \$14,803,126 in fees and expenses, for an average fee per store of approximately \$108,847. The case of In re Ames Department Stores, Inc. (Case No. 90 B 11233), which was commenced on April 25, 1990 in the United States Bankruptcy Court for the Southern District of New York, involved 680 retail stores. Ames' legal advisors were paid \$23,091,760 in fees and expenses. This represents average legal fees and expenses per store of approximately \$33,958. Finally, in In re Montgomery Ward Holding Corp. (Case Number 97-1409), which was commenced on July 7, 1997 in the United States Bankruptcy Court for the District of Delaware, Montgomery Ward entered Chapter 11 with 393 retail stores. Its legal advisors were paid \$15,997,167 in fees and expenses, for an average fee per store of approximately \$40,705.

62. In contrast, in these Reorganization Cases, Skadden's requested fees and expenses represent an average cost to the Debtors of approximately \$27,726 per store for each of the 2,114 stores as of the Petition Date, which is less than the average cost per store for each of the above-referenced retail Chapter 11 cases, even before taking into consideration the time value of money.

63. A recent study was undertaken of professional fees and expenses awarded by Bankruptcy Courts in the Chapter 11 cases of 48 large, public companies whose plans were

confirmed in the period from 1998 through mid-2002.<sup>10</sup> For purposes of the study, a "large" company was one with assets in excess of \$200 million in 2002 dollars, although the average value of the assets of the companies included in the study, as listed in such companies' Chapter 11 petitions, was approximately \$881 million. According to the study, the size of a debtor, as measured by its assets as reported on its petition, is the single most important factor in predicting the amount of fees and expenses that will be incurred in the debtor's chapter 11 case. The average ratio of fees and expenses of all professionals in these 48 cases, including attorneys and financial advisors to the debtors and their statutory committees, was 1.9%. Kmart listed total assets of \$14.3 billion in its petition. Total professional fees and expenses in these Cases are estimated at \$110 million, which is 0.77% of the Debtors' total petition date assets, or less than one-half the mega-case average.

64. Finally, the amount of fees sought by Skadden in this Final Application are commensurate with the fees being incurred by debtor's counsel in several of the largest Chapter 11 reorganization cases ever filed, as measured by the amount of assets reported in the bankruptcy petitions of such cases. For instance, fees for primary counsel to the debtor in the Enron Corporation case pending in New York total approximately \$81.5 million for the first 16 months of the case.<sup>11</sup> Fees for counsel to the debtor in the Global Crossings, Ltd. case pending in New

---

<sup>10</sup> L. LoPucki and J. Doherty, The Determinants of Professional Fees in Large Bankruptcy Reorganization Cases, *Journal of Empirical Legal Studies*, Jan. 2004, available at <http://ssrn.com/abstract=419280>.

<sup>11</sup> Multiple law firms provide significant representation to Enron and each of the other debtors cited herein in connection with their restructuring efforts. For instance, in certain cases, the debtors retained separate real estate, litigation, or investigations counsel. In these Reorganization Cases, however, Skadden

(continued...)



York total approximately \$55 million for the first 14 months of the case. Fees for debtor's counsel in the Worldcom, Inc. case pending in New York total approximately \$46 million for the first 10 months of the case. For the first 7 months of the United Airlines case pending in this District, fees for counsel to the debtors aggregate approximately \$23.8 million. Other significant Chapter 11 cases include Adelphia Communications, where fees for the debtor's counsel total approximately \$21 million for the first 9 months, and Conseco, Inc., where fees for the debtor's counsel total approximately \$14.2 million for the first six months.

65. The average monthly rate at which debtor's counsel's fees are being incurred in Enron, Global Crossing, Worldcom, United Airlines, Adelphia, and Conseco is \$5.09 million, \$3.9 million, \$4.6 million, \$3.4 million, \$2.3 million, and \$2.3 million, respectively. The average of these monthly rates is \$3.6 million. The average monthly rate incurred by Skadden in these Cases was approximately \$3.6 million. Thus, the monthly rate of fees incurred by Skadden was essentially the same as (and in some cases, less than) the average monthly rate of fees being incurred by the debtors in other mega Chapter 11 cases.

66. While these other bankruptcy cases are clearly significant, none of them involved nearly as many employees as did Kmart (240,000 as of the Petition Date), which

---

<sup>11</sup>(...continued)

has been able to efficiently represent the Debtors in all significant aspects of their restructuring and related matters so that the Debtors did not have to engage any other law firm for any material aspect of their restructuring efforts. In order to provide a fair comparison between the fees incurred in these Reorganization Cases and the fees incurred in the other cases, the fee totals for each of the other cases include fees incurred by each of the major law firms retained to represent the debtor with the exception of Enron; the fees cited for Enron were incurred by the primary restructuring law firm representing that company.

necessarily involved significant additional issues, especially where, as here, all the executive senior management was replaced in the first 60 days of the case. None of them involved multiple anonymous letters purportedly sent by employees that spurred numerous investigations. While these debtors face industry pressure and competition that makes their restructuring efforts more difficult, none of them had to restructure their affairs in the face of direct competition from the single largest corporation in the world (Wal-Mart). These added considerations, coupled with the fact that Kmart is one of the few (and perhaps only) retailers ever to successfully emerge from Chapter 11 after only a single holiday season, mark these Reorganization Cases as one of the more significant Chapter 11 cases in recent history.

SUMMARY OF SERVICES RENDERED BY  
SKADDEN DURING THE REORGANIZATION CASES

67. Throughout the Reorganization Cases, Skadden worked closely with the Debtors and their advisors to administer these estates and maximize the return for estate creditors. These services were directed towards myriad tasks necessary to achieve this result. To meet the Debtors' needs, Skadden attorneys have provided multi-disciplinary services on a daily basis, often working nights and weekends. Throughout this process, certain of the principal Skadden attorneys working on the Reorganization Cases were required to devote the vast majority of their time to this matter. As a result of the efforts of the Debtors and their advisors, the Debtors successfully took large strides in evaluating their businesses and emerging from Chapter 11 as quickly as possible.

68. At the commencement of the Reorganization Cases, Skadden created thirty-five (35) different matter numbers or subject-matter categories (the "Matter Categories") to which its professionals assigned the time billed by them, all of which are related to the tasks

performed by Skadden on behalf of the Debtors.<sup>12</sup> All Skadden professionals kept a contemporaneous record of the time spent rendering such services and, consistent with guidelines of the Office of the United States Trustee, separated tasks in billing increments of one-tenth of an hour. All of the services performed by Skadden have been legal in nature and necessary for the proper administration of the Reorganization Cases.

69. Skadden devoted approximately 62% of its time to the following matters, each of which was responsible for fees in excess of \$2 million during the Reorganization Cases: Regulatory/Investigation Matters; Leases (Real Property); Asset Dispositions (Real Property); Case Administration; and Reorganization Plan.

70. Matters to which Skadden devoted approximately 27% of its time in the aggregate and billed between \$1 million and \$2 million in fees during the Reorganization Cases are: Executory Contracts (General); Vendor Matters; General Corporate Advice; Nonworking Travel Time; Financing/DIP and Emergence; Claims Administration (General); Tax Matters; Creditor Meetings/Statutory Committees; Employee Labor Matters; and Automatic Stay (Relief Actions).

---

<sup>12</sup> Exhibit B contains a table of all matter numbers used in these Chapter 11 Cases, as well as a description of certain business statistics of Skadden in these Chapter 11 Cases. Exhibit C and Exhibit D contain summaries of requested compensation organized by professional and matter number, respectively. As noted above, the January, 2003 through May, 2003 Monthly Statements, separated by matter number, are attached hereto as Exhibit E. Monthly Statements for the periods from January 22, 2002, through December 31, 2002, were submitted in appendices accompanying the First Interim Fee Application, the Second Interim Fee Application, and the Third Interim Fee Application.

71. Matters to which Skadden devoted approximately 11% of its time in the aggregate and billed under \$1 million in fees during the Reorganization Cases are: Claims Administration (Consignment/Reclamation); Disclosure Statement/Voting Issues; Secured Claims; Utilities; Retention/Fee Matters/Objections (Others); Asset Dispositions (General); Business Operations/Strategic Planning; Asset Dispositions (Inventory); Executory Contracts (Licenses); Retention/Fee Matters (SASM&F); Insurance; Asset Analysis and Recovery; Claims Administration (PACA/PASA); Reports and Schedules; Environmental Matters; Litigation (General); Litigation (Insurance Recovery); and Real Estate (Owned). Of the nineteen matters in this category, seven matters had less than \$100,000 billed in the aggregate over the Case Period, and all nineteen matters average less than \$300,000 per matter, which is less than one-half of one percent of the total amount requested in the Final Application.

#### MATTERS GREATER THAN \$2,000,000

##### A. Regulatory/Investigation Matters

72. On January 12, 2002, the Debtors received a copy of an anonymous letter addressed to the Securities and Exchange Commission ("SEC") dated January 9, 2002. The letter purported to be from Kmart employees who alleged that they had been directed to make improper accounting entries in the books and records of the company. On January 14, 2002, the board of directors instructed Skadden, under the supervision of the Audit Committee, to conduct an internal investigation into the allegations contained in the letter (the "Accounting Investigation"). The goal was to review accounting matters raised by the anonymous letter and other issues identified in the course of such an inquiry, with the intent of completing such an

investigation prior to the company's filing of its Form 10-K Annual Report for Fiscal Year 2001, which it did on May 15, 2002.

73. Subsequent to January 2002, and continuing until as recently as the month of March 2003, the Debtors, Skadden, members of Kmart's board of directors, the Statutory Committees and certain of their members, selected media outlets, and certain government representatives received 81 additional anonymous letters relating allegations of misfeasance and malfeasance by past management. Skadden was directed by the Audit Committee to investigate the allegations contained in these letters, as well as other matters that came to Skadden's attention during the course of the inquiry. This phase of the inquiry, which was taken up following the substantial completion of the Accounting Investigation, was denominated the "Stewardship Investigation" (together with the Accounting Investigation, the "Investigation").

74. At the same time, the SEC and the United States Attorneys' Office for the Eastern District of Michigan (the "USAO"), aided by the Federal Bureau of Investigation and a federal grand jury, opened inquiries into events that occurred at the Debtors leading up to the filing of the petitions (the "Government Inquiries"). Kmart's board of directors directed the company and Skadden to cooperate fully with the SEC and USAO investigations. To facilitate this cooperation, the company, through its counsel, entered into confidentiality agreements with the SEC and the USAO. In June 2002, the Debtors consulted with the three Statutory Committees regarding the conduct and completion of the Investigations. Thereafter, with the approval of the board of directors, legal counsel and forensic accounting professionals retained by the three Statutory Committees were invited to participate on a joint interest basis in the Investigations, subject to a confidentiality agreement among all the participating parties.

75. As would be expected in an investigation involving this type of subject matter and of the scope necessitated by a company as large as Kmart, Skadden was required to devote a very substantial amount of resources to the Investigation. During the Investigation, Skadden professionals collected millions of pages of documents, including board of directors materials, audit work papers, accounting records (including ledgers and journal entries), and various company filings, policies, contracts, invoices, reports, electronic email, and other electronic material. In addition, Skadden professionals issued subpoenas for documents pursuant to Bankruptcy Rule 2004 to 22 former Kmart employees and three third-party witnesses. More than 17,500 pages of documents were produced in response to those subpoenas. Skadden professionals reviewed and analyzed roughly 1,900,000 pages of documents during the Investigation.

76. In response to certain requests propounded by the SEC, the USAO, and the House Energy and Commerce Committee, Skadden professionals assisted the Debtors in collecting approximately 2,610,000 pages of information, contained in 1,453 boxes, and processed and produced more than 693,000 pages to the SEC, more than 33,000 pages to the USAO, and more than 21,000 pages to the House Energy and Commerce Committee.

77. As part of the Investigation, Skadden professionals conducted interviews of more than 373 former and current Kmart employees. Where appropriate, there were follow-up interviews, as well as interviews conducted in connection with assuring that document collection efforts were complete, resulting in more than 600 total interviews being conducted by Skadden professionals. Skadden professionals met with the Debtors' board of directors on numerous occasions to provide status updates regarding the progress of the review, and met

with representatives of the SEC, the FBI, the USAO, and certain of the Debtors' advisors on numerous occasions concerning the accounting matters alluded to in the anonymous letters and related issues. The Investigation was conducted at the same time that the SEC, the FBI, and the United States House of Representatives Committee on Energy and Commerce were conducting investigations and inquiries regarding these matters. As noted above, the Debtors cooperated with these agencies in their investigations.

78. The Debtors viewed these investigations, all resulting findings, and any necessary corrective or remedial action, as critically important to their efforts to restructure their affairs and to regain the confidence of their employees, creditors, and suppliers in Kmart's management, business integrity, and go-forward operations. The thorough-going nature of the investigations, conducted on a joint-interest basis with the Statutory Committees, avoided the distinct possibility of appointment of a Chapter 11 trustee or examiner, which would have cost the estates millions of dollars in additional fees and damage to the business as it tried to restructure its affairs. Indeed, the law firms hired by the examiners appointed in the Enron and WorldCom Chapter 11 cases have cost those estates over \$67 million, in addition to the fees being incurred by the debtors and other estate professionals in those cases. The Debtors, with the assistance of Skadden, successfully avoided these additional costs while also avoiding the cloud that would have hovered over Kmart's business had a trustee or examiner been appointed, a cloud that could very well have eventually suffocated the business, leaving little or no value for any creditor constituency.<sup>13</sup>

---

<sup>13</sup> Due in part to the types of allegations raised in this and other Chapter 11 cases, on July 30, 2002, President Bush signed into law the Sarbanes-Oxley  
(continued...)

79. In connection with the foregoing services, Skadden professionals expended 58,228.6 hours during the Reorganization Cases for which Skadden seeks compensation of \$17,184,341. Detailed time entries of each Skadden professional related to services performed during the Fourth Application Period are attached hereto as Exhibit E-1. A summary of the hours incurred and value of the services performed by each professional is provided in the following table:<sup>14</sup>

Name	Rate	Fourth Period Hours	Fourth Period Amount	Case Period Hours	Case Period Amount
Charles F. Walker	\$476	475.9	\$230,813	2,450.2	\$1,166,330
Edward Ross, Jr.	\$476	362.8	\$175,960	2,252.4	\$1,071,240
Obiamaka P. Okwumabua	\$378	474.8	\$187,547	2,671.1	\$1,009,248
Louis D. Greenstein	\$392	410.7	\$170,441	2,463.3	\$966,565
Christopher P. Malloy	\$507	87.8	\$47,851	1,653.0	\$837,367
Laura A. Brill	\$357	690.3	\$258,864	2,278.8	\$813,125
Rebecca Min	\$273	562.7	\$165,998	2,911.0	\$795,721
Gaston F. deBearn	\$316	596.8	\$199,929	2,462.7	\$778,720
Amy R. Sabrin	\$520	373.9	\$203,777	1,464.8	\$761,459
Keith D. Krakaur	\$596	215.6	\$134,751	1,146.8	\$683,951

<sup>13</sup>(...continued)

Act of 2002. The Sarbanes-Oxley Act establishes a public company accounting oversight board; provides standards designed to enhance the independence of auditors; outlines requirements and procedures for establishing enhanced financial disclosures; provides criminal sanctions for the falsification and destruction of records in Federal investigations and bankruptcy proceedings; and provides increased protections for those who provide information concerning alleged violations of the Act. The Sarbanes-Oxley Act signaled a sweeping change in the current corporate environment. Now more than ever, actions of corporate management are subject to intense scrutiny and the possibility of massive fines.

<sup>14</sup> The Rate column that appears in all subsequent charts refers to the indicative billing rate of a professional throughout the full Case Period, and not the billing rate for any one application period. As set forth in the Engagement Letter, billing rates are periodically reviewed and revised.



Name	Rate	Fourth Period Hours	Fourth Period Amount	Case Period Hours	Case Period Amount
Edward Flis	\$380	360.5	\$142,398	1,448.6	\$550,789
Charles F. Smith	\$637	175.7	\$115,085	660.2	\$420,660
Eric J. Gorman	\$444	314.3	\$143,009	914.5	\$406,277
Nicole A. Epstein	\$363	340.1	\$127,539	1,050.7	\$381,662
Michael P. Kelly	\$335	0.0	\$0	970.8	\$325,463
Brian E. Klein	\$313	98.5	\$32,999	865.0	\$270,886
Colleen P. Mahoney	\$640	23.6	\$16,048	503.1	\$322,143
N. Nathan Dimock	\$243	559.0	\$137,032	1,067.9	\$259,168
Dmitry Lukovsky	\$240	432.6	\$103,824	903.8	\$216,912
Mark C. Del Bianco	\$473	0.0	\$0	407.9	\$192,920
Linda G. Morrison	\$460	0.0	\$0	396.9	\$182,574
Robert L. Arrington, Jr.	\$283	0.0	\$0	552.2	\$156,450
David J. Friedman	\$698	1.2	\$870	215.7	\$150,651
Jacob E. Hollinger	\$380	0.0	\$0	392.2	\$149,036
Janet Byrne Thabit	\$432	53.2	\$23,142	318.8	\$137,635
Thomas A. Gilson	\$475	0.0	\$0	223.9	\$106,352
Mitchell S. Ettinger	\$610	0.0	\$0	148.9	\$90,829
Ryan J. Rohlfson	\$238	0.0	\$0	320.8	\$76,443
Margaret E. Lancaster	\$336	0.0	\$0	210.8	\$70,779
Brian S. Weinstein	\$239	0.0	\$0	280.1	\$66,957
Douglas W. Swalina	\$395	23.0	\$9,085	168.8	\$66,676
Daniel Sobelsohn	\$436	0.0	\$0	153.0	\$66,656
Aney K. Chandy	\$365	0.0	\$0	177.5	\$64,789
John Wm. Butler, Jr.	\$700	6.3	\$4,568	86.7	\$60,679
Lebawit Girma	\$265	0.0	\$0	217.1	\$57,532
Wendy Pearson	\$295	0.0	\$0	184.9	\$54,546
William M. Rohner	\$240	225.0	\$54,000	225.0	\$54,000
Danielle A. Cutrona	\$335	58.1	\$19,464	159.1	\$53,299
Jason M. Schall	\$375	140.8	\$52,801	140.8	\$52,801
Joshua N. Howley	\$295	39.3	\$11,594	167.0	\$49,266
Tzivia Masliansky	\$295	0.0	\$0	156.1	\$46,050
Victoria A. Birov	\$390	0.0	\$0	106.3	\$41,406
Christopher P. Connors	\$353	0.0	\$0	113.4	\$39,978
Kelly D. Makins	\$375	0.0	\$0	93.2	\$34,951
Ryan S. Wagley	\$335	101.8	\$34,103	101.8	\$34,103
Peter A. Atkins	\$695	0.0	\$0	43.9	\$30,511
J. Eric Ivester	\$616	0.0	\$0	45.4	\$27,973

Name	Rate	Fourth Period Hours	Fourth Period Amount	Case Period Hours	Case Period Amount
Keren Estime	\$295	0.0	\$0	87.4	\$25,785
Risa M. Levine	\$272	0.0	\$0	93.2	\$25,305
Louis D. Wilson	\$330	0.0	\$0	73.0	\$24,090
Lcander C. Gray	\$380	0.0	\$0	60.4	\$22,952
Brian A. Blitz	\$295	0.0	\$0	66.6	\$19,647
Eric C. Omess	\$240	79.1	\$18,984	79.1	\$18,984
Michael W. Little	\$240	76.6	\$18,384	76.6	\$18,384
Tymour Okasha	\$265	0.0	\$0	67.3	\$17,835
Rebecca M. Girsch	\$313	0.0	\$0	51.4	\$16,091
Judith A. Wise	\$380	0.0	\$0	42.2	\$16,036
Jennifer P. Brovey	\$415	0.0	\$0	34.5	\$14,318
Brian P. Kelly	\$330	0.0	\$0	38.4	\$12,672
Robert S. Bennett	\$695	0.0	\$0	13.9	\$9,661
Mark A. McDermott	\$417	1.1	\$501	21.4	\$8,926
John P. Furfaro	\$610	0.0	\$0	10.5	\$6,405
Joseph N. Wharton	\$302	1.6	\$536	9.8	\$2,955
Laura Pieper Schroeder	\$265	0.0	\$0	6.3	\$1,670
Legal Assistants @ \$110	\$110	1,898.1	\$208,791	8,751.3	\$962,643
Legal Assistants @ \$130	\$130	2,026.8	\$263,484	6,151.7	\$799,721
Legal Assistants @ \$160	\$160	737.8	\$118,048	2,311.0	\$369,760
Legal Assistants @ \$195	\$195	333.7	\$65,073	1,413.6	\$273,773
Legal Assistants @ \$80	\$80	0.0	\$0	2,063.6	\$165,088
Legal Assistants @ \$150	\$150	0.0	\$0	535.2	\$80,280
Legal Assistants @ \$70	\$70	0.0	\$0	201.3	\$14,092
Legal Assistants @ \$170	\$170	0.0	\$0	22.0	\$3,740
<b>Grand Total</b>		<b>12,359.1</b>	<b>\$3,497,293</b>	<b>58,228.6</b>	<b>\$17,184,341</b>

B. Leases (Real Property)

80. Kmart and the Affiliate Debtors collectively are one of the largest real estate operations in the United States, including their interests as both owners of land and as tenants under commercial real estate leases. As of the Petition Date, the Debtors controlled roughly 200 million square feet of commercial real estate and 23 million square feet of industrial real estate devoted to its distribution operations. The overwhelming majority of

Kmart stores and distribution facilities are leased. These leases therefore comprised one of the largest categories of assets in these Reorganization Cases, and thus required substantial attention by Skadden professionals during the Chapter 11.

81. Indeed, as of the Petition Date, the Debtors were parties to just over 5,000 real estate leases, including approximately 3,050 leases and 1,960 subleases. As of the Petition Date, there were approximately 2,335 landlords in these proceedings and 900 subtenants, for a total of 3,235 landlords and subtenants. Skadden dealt with a significant number of these landlords and subtenants throughout these Reorganization Cases in connection with a myriad of different issues. Many motions were filed during these Reorganization Cases by landlords or subtenants which required written responses and negotiations by the Debtors' with Skadden's assistance. As this Court is aware, the overwhelming majority of these matters were resolved consensually, often after a great deal of negotiation and other work.

82. At the outset of these Reorganization Cases, Skadden devoted significant amounts of time at the Debtors' direction compiling a comprehensive list of the Debtors' current real estate portfolio, and also created databases of information relating to the leases and the landlords. In connection with the foregoing, Skadden attorneys reviewed the Debtors' property files for each leased property. Throughout the Reorganization Cases, Skadden drafted numerous motions pertaining to real estate lease matters, including various rejection, assumption and assignment, and other related motions. Skadden reviewed the Debtors' leases for the purpose of analyzing and preserving the Debtors' rights to assume and assign or reject leases, and advocated for the Debtors at hearings relating to the rejection and assumption and assignment of leases and other matters concerning the disposition of the Debtors' leases.

83. A particularly important example of one such matter, critical to the Debtors' restructuring efforts, was the Debtors' motion to extend their deadline for assuming or rejecting their unexpired leases pursuant to Section 365(d)(4) of the Bankruptcy Code. While the overwhelming majority of landlords and subtenants chose not to contest the Debtors' request, 70 objections were filed by over 100 landlords involving approximately 565 leases. The Debtors, with Skadden's assistance, nonetheless succeeded in resolving almost all of these objections; only a very small handful remained that required a contested hearing, and this Court overruled those objections and, at the Debtors' request, authorized an extension of the Section 365(d)(4) deadline until March 31, 2003, which was necessary for the Debtors to evaluate the performance of their stores during the 2002 holiday season. In March 2003, Skadden successfully obtained a second extension of the Section 365(d)(4) deadline for the Debtors to extend the applicable deadline for all go-forward stores through the anticipated date of plan confirmation.

84. In February and March 2003, the Debtors sought to secure an extension of the 365(d)(4) deadline for the 2003 closing store leases to allow the Debtors to continue to market such leases following the confirmation of the Plan without undertaking the risks associated with the assumption of such leases prior to locating a suitable assignee. This motion generated 54 objections involving 129 stores. Of these, the Debtors, with Skadden's assistance, successfully resolved 23 objections involving 75 stores. While the Court ruled that the 365(d)(4) deadline could not be extended past emergence from Chapter 11, the Debtors, with Skadden's assistance, thereafter pursued an aggressive disposition strategy with respect to the closing store leases in order to maximize the value of these leases. As discussed in more detail

below, the Debtors ultimately obtained over \$96 million in value for certain of these leases while rejecting the rest.

85. Another example of a critical real estate matter that required significant involvement and support by Skadden professionals pertained to the Debtors' decision to reject leases that were no longer necessary to the Debtors' business operations. Indeed, during the Reorganization Cases, Skadden attorneys drafted and prosecuted motions to implement the Debtors' decisions to reject certain leases, in each case working closely with the Debtors and their business advisors on decisions pertaining to which leases to reject, and in reviewing and replying to dozens of objections by landlords and other parties-in-interest. Such efforts have allowed the Debtors' estates to shed the burdens and administrative expenses that otherwise would have been incurred with respect to leases for locations that are not part of the Debtors' go-forward business plans. Since the Petition Date, over 900 of such leases have been rejected, not including those rejected in the Plan.

86. Examples of matters raised by certain landlords that are particularly important in a case where so much value is in the Debtors' portfolio of leases concern (i) the enforceability of so-called "go-dark" provisions in leases, which ostensibly allow a landlord to terminate a lease in the event the debtor ceases operations (even with Court approval), and (ii) whether certain accrued taxes constituted prepetition taxes that the Debtors were precluded from paying under controlling precedent in this Circuit or whether they constituted postpetition obligations that needed to be timely paid.

87. As this Court is aware, these issues were raised several times by a number of landlords, sometimes in pleadings and other times in written correspondence. In each case,

Skadden devoted significant resources in ensuring that the interests of the Debtors and their estates were protected, whether through preparation of detailed responses and briefs, close analysis of the tax laws of different jurisdictions, or preparation of witnesses for possible trial. The Debtors, with Skadden's assistance, succeeded in obtaining favorable rulings from this Court on both of these issues during the Case Period.

88. Skadden professionals also successfully defended against landlord motions requesting this Court to compel the Debtors to establish tax escrows for post-petition taxes that were not yet due, and that further requested this Court to compel the Debtors to obtain insurance on their leased premises contrary to the explicit requirements of the leases in question. Skadden's efforts in this regard significantly assisted the Debtors and their estates in conserving cash flow and avoiding unnecessary post-petition obligations that were unwarranted under both the leases and applicable law.

89. During the Reorganization Cases, Skadden professionals also prepared extensive briefs in connection with numerous landlord requests to compel payment of certain percentage rent claimed due under the leases. The Debtors and the landlords each advocated very different methods of calculating prepetition and postpetition percentage rent. Ultimately, this Court, in a detailed oral ruling which acknowledged the complexity of the issue, took a position between the two positions argued by the Debtors and the landlords. The Court's position, which adopted certain of the Debtors' objections to the landlords' position, resulted in savings of millions of dollars to the estates.

90. Throughout the Reorganization Cases, Skadden filed responses and briefs and devoted significant time to the preparation for the defense of a number of appeals of certain

orders of this Court filed by landlords including, without limitation, appeals of the Court's decisions relating to the "go-dark" issue and an appeal of the Court's decision with respect to whether real estate taxes constitute a prepetition or postpetition expenses. Moreover, in connection with the Debtors' Plan, Skadden professionals researched and responded to numerous landlord objections regarding cure claim and rejection claim resolution procedures and other matters in the Plan affecting landlords. Skadden professionals negotiated a global settlement with 27 objecting landlords of 530 leases, which was incorporated into the Plan that was confirmed by this Court on April 22, 2003.

91. Skadden assisted the Debtors throughout the Reorganization Cases in defending against complex eviction and related proceedings commenced by certain landlords prior to the Petition Date. While these proceedings were stayed during the Chapter 11, the landlords were not idle: they filed lift stay motions, plan objections, motions to compel compliance with Section 365(d)(3), adversary complaints, and a host of other motions and related pleadings designed to exert leverage over the Debtors as they restructured their affairs. While the total number of landlords who commenced such actions was small, they were among the most vocal and active litigants in the Reorganization Cases and consumed a large amount of resources of both the Debtors and Skadden in preparing litigation strategy and written responses.

92. In an effort to reduce the number of store closings in 2003, Skadden assisted the Debtors and their advisors in negotiating 61 rent reduction amendments. Skadden finalized the lease amendment documentation relating to all negotiations. Such efforts allowed the Debtors' estates to take advantage of lower operating costs on a go-forward basis such that

the Debtors could reverse their decision to cease operations at a given store if future economic circumstances so warrant.

93. Finally, Skadden professionals handled and responded to innumerable daily inquiries by landlords regarding their respective leases. Skadden assisted the Debtors in resolving disputes with various parties relating to leased properties, including disputes pertaining to postpetition rent, tax, common area maintenance charges and cure claim issues and other alleged defaults or disputes under the leases. Skadden attorneys attended numerous meetings with the Debtors and the Debtors' real estate and business advisors regarding the disposition of the Debtors' leases, and conducted research regarding the Debtors' ability to reject certain leases and the economic and tax consequences of the rejection of certain leases under the Bankruptcy Code.

94. In connection with the foregoing services, Skadden professionals expended 19,433.3 hours during the Reorganization Cases for which Skadden seeks compensation of \$6,366,481. To put this number into perspective in light of the value obtained on behalf of the Debtors during these Reorganization Cases, this number is less than half of the annual revenue generated by a typical, single Kmart store. Detailed time entries of each Skadden professional related to services performed during the Fourth Application Period are attached hereto as Exhibit E-2. A summary of the hours incurred and value of the services performed by each professional is provided in the following table:

Name	Rate	Fourth Period Hours	Fourth Period Amount	Case Period Hours	Case Period Amount
Marian P. Wexler	\$653	318.0	\$216,240	1,158.1	\$756,338
Nancy M. Olson	\$412	441.3	\$191,966	1,555.2	\$641,086
Christine M. DeMott	\$310	355.8	\$119,194	1,971.6	\$611,692



Name	Rate	Fourth Period Hours	Fourth Period Amount	Case Period Hours	Case Period Amount
Catherine E. Danz	\$273	618.7	\$182,517	2,017.5	\$551,768
Sarah K. Lee	\$242	685.9	\$168,044	1,331.6	\$321,870
Charles F. Smith	\$623	96.6	\$63,274	403.8	\$251,759
Van C. Durrer, II	\$474	101.4	\$49,491	516.8	\$245,057
Joseph N. Wharton	\$313	241.7	\$80,971	763.4	\$239,125
Janet Byrne Thabit	\$414	97.5	\$42,413	551.1	\$228,227
Paul J. Huff	\$463	88.9	\$42,228	462.5	\$214,084
Kurt Ramlo	\$439	182.7	\$83,128	390.6	\$171,584
Christopher P. Connors	\$354	135.8	\$50,927	479.9	\$169,993
Marcn L. Calvert	\$275	69.1	\$20,385	582.6	\$160,349
Victoria A. Birov	\$405	134.3	\$55,735	279.1	\$113,139
Hillary A. Hamilton	\$272	69.3	\$20,445	380.1	\$103,222
Harriet S. Posner	\$626	1.9	\$1,245	163.9	\$102,626
Carl A. Roth	\$472	15.8	\$7,663	188.9	\$89,221
Mark A. McDermott	\$423	20.5	\$9,329	208.3	\$88,084
Rebecca M. Girsch	\$330	181.1	\$60,669	252.9	\$83,423
John Wm. Butler, Jr.	\$708	23.8	\$17,255	83.2	\$58,876
Brian J. Thompson	\$300	9.7	\$3,249	190.0	\$57,016
John Storr	\$370	0.0	\$0	153.0	\$56,559
Susan H. Martin	\$385	88.5	\$34,958	136.2	\$52,369
Seth Goldman	\$240	169.1	\$40,584	189.5	\$45,480
Laura Pieper Schroeder	\$267	6.5	\$1,918	145.6	\$38,841
Daniel S. Liberman	\$307	33.2	\$11,122	111.8	\$34,308
Ryan J. Rohlfen	\$239	0.0	\$0	135.4	\$32,380
Gershon Seiferas	\$330	0.0	\$0	97.0	\$32,010
Amy S. Park	\$435	0.0	\$0	58.1	\$25,274
Michael Jackowitz	\$230	0.0	\$0	109.2	\$25,116
J. Eric Ivester	\$634	14.4	\$9,432	36.9	\$23,395
Brian M. Fern	\$315	31.7	\$10,620	64.4	\$20,268
Robert F. Lemoine	\$263	61.5	\$16,524	74.8	\$19,685
Eric J. Gorman	\$455	40.2	\$18,291	40.2	\$18,291
K. Lucy Atwood	\$240	0.0	\$0	47.4	\$11,376
Samuel S. Ory	\$380	0.0	\$0	28.5	\$10,830
Matthew A. Shebuski	\$395	12.7	\$5,017	27.2	\$10,745
William M. Rohner	\$255	41.6	\$10,604	41.6	\$10,604
Shea D. Welch	\$312	14.5	\$4,858	33.6	\$10,493
Edward Flis	\$395	0.0	\$0	21.8	\$8,611

Name	Rate	Fourth Period Hours	Fourth Period Amount	Case Period Hours	Case Period Amount
Thomas R. Fawkes	\$244	14.6	\$3,628	28.2	\$6,892
Michael W. Jones	\$295	0.0	\$0	21.9	\$6,462
Kathryn C. Newman	\$375	13.7	\$5,138	13.7	\$5,138
Stephen Lubben	\$395	0.0	\$0	12.4	\$4,898
T. Anthony Jaye	\$243	3.1	\$915	15.3	\$3,721
Kristin E. Rooney	\$330	0.0	\$0	9.0	\$2,970
Corinne Rebhun	\$295	0.0	\$0	9.1	\$2,685
John A. Amodco	\$485	0.0	\$0	5.3	\$2,571
James S. Harrington	\$295	6.9	\$2,036	6.9	\$2,036
Legal Assistants @ \$160	\$160	90.2	\$14,432	1,203.2	\$192,512
Legal Assistants @ \$195	\$195	525.0	\$102,378	972.5	\$189,642
Legal Assistants @ \$130	\$130	447.1	\$58,123	965.4	\$125,502
Legal Assistants @ \$110	\$110	0.0	\$0	294.8	\$32,428
Legal Assistants @ \$150	\$150	0.0	\$0	199.2	\$29,880
Legal Assistants @ \$70	\$70	45.2	\$3,164	147.8	\$10,346
Legal Assistants @ \$80	\$80	1.2	\$96	45.3	\$3,624
<b>Grand Total</b>		<b>5,550.7</b>	<b>\$1,840,206</b>	<b>19,433.3</b>	<b>\$6,366,481</b>

C. Asset Dispositions (Real Property)

95. During the initial stage of these Reorganization Cases, the Debtors obtained authority to close 283 underperforming stores (the "2002 Closing Stores"). In addition, in January 2003, the Debtors obtained authority from this Court to close an additional 316 underperforming stores (the "2003 Closing Stores"). The leases relating to the 2002 Closing Stores and the owned properties and leases relating to the 2003 Closing Stores constituted a significant source of value for the Debtors. Skadden worked closely with the Debtors and their advisors during the Reorganization Cases to ensure the efficient disposition of these leasehold interests, and with respect to the 2003 Closing Stores, certain fee owned property interests, and to maximize their value for these estates.