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

In re:

KMART CORPORATION, et al.,

Debtors.

Case No. 02-B02474
(Jointly Administered)

Judge Susan Pierson Sonderby

Hearing Date: To Be Determined
Hearing Time: To Be Determined
Objection Deadline: To Be Determined

NOTICE OF MOTION

TO THE ATTACHED SERVICE LIST:

PLEASE TAKE NOTICE that, on July 31, 2003, we filed the attached FINAL APPLICATION OF TRAUB, BONACQUIST & FOX LLP FOR COMPENSATION FOR SERVICES RENDERED AND REIMBURSEMENT OF OUT-OF-POCKET EXPENSES AS LEAD CO-COUNSEL TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS FOR THE PERIOD JUNE 14, 2002 THROUGH MARCH 31, 2003, INCLUSIVE with the United States Bankruptcy Court for the Northern District of Illinois in the above-captioned case, a copy of which is hereby served upon you.

Dated: July 31, 2003

**OFFICIAL COMMITTEE OF EQUITY
SECURITY HOLDERS OF KMART
CORPORATION, ET AL.**

By: _____

One of Its Attorneys

Randall L. Klein (ARDC# 6204582)
Jeremy M. Downs (ARDC# 6272155)
GOLDBERG, KOHN, BELL, BLACK,
ROSENBLUM & MORITZ, LTD.
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603
(312) 201-4000
(312) 332-2196 facsimile

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

JUL 31 2003

**KENNETH S. GARDNER, CLERK
PS REP. - GW**

REC'D AUG 01 2003

IN THE UNITED STATES BANKRUPTCY COURT
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KENNETH B. GARDNER, CLERK
PS REP. - SW

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

**FINAL APPLICATION FOR ALLOWANCE OF FEES AND
REIMBURSEMENT OF EXPENSES OF TRAUB, BONACQUIST & FOX LLP
AS LEAD CO-COUNSEL TO THE OFFICIAL COMMITTEE OF
EQUITY SECURITY HOLDERS FOR THE PERIOD
JUNE 14, 2002 THROUGH MARCH 31, 2003, INCLUSIVE**

TO: THE HONORABLE SUSAN PIERSON SONDERBY:
UNITED STATES BANKRUPTCY JUDGE:

Traub, Bonacquist & Fox LLP ("TB&F"), in its capacity as lead co-counsel to the Official Committee of Equity Security Holders (the "Equity Committee") of Kmart Corporation, *et al.*, debtors and debtors-in-possession herein (collectively, the "Debtors"), respectfully submits this final application (the "Final Application") in support of its request for the entry of an order, pursuant to section 330 of Title 11, United States Code (the "Bankruptcy Code"), *inter alia*, (a) approving and awarding a final allowance of compensation for legal services rendered during the period June 14, 2002 through March 31, 2003, inclusive (the "Retention Period") in the amount of \$1,116,832.00, and (b) approving and awarding a final allowance of reimbursement of expenses incurred during the Retention Period in the amount of \$59,362.46, which amounts include (a) ratification of this Court's order authorizing an interim allowance of 90% of professional compensation in the amount of \$492,458.25 and 100% of expenses incurred in the amount of \$23,619.23 for the period June 14, 2002 through and including August 31, 2002 (the

“First Interim Period”), by order dated December 31, 2002 (the “First Interim Fee Order”), of which TB&F received \$437,113.47 for payment of professional compensation and \$23,619.23 for payment of expenses incurred for the First Interim Period, leaving a balance owed of \$55,344.78 for unpaid professional compensation (the “Holdback Amount”); (b) request for an award of the Holdback Amount for professional compensation in the amount of \$55,344.78; (c) request for an award of \$582,591.75 for professional compensation and \$29,820.01 for expenses incurred for the period September 1, 2002 through and including December 31, 2002 (the “Second Interim Period”), which application was filed with the Court on March 14, 2003; however, no hearing was scheduled or held on this application; (c) request for an award of \$41,782.00¹ for professional compensation and \$5,923.22 for expenses incurred for the period January 1, 2003 through and including March 31, 2003 (the “Third Interim Period”), which has not been the subject of a previous request or application to the Court; and (d) granting TB&F such other and further relief as is just and proper. In support of this Final Application, TB&F respectfully represent as follows:

I.

INTRODUCTION

1. On January 22, 2002 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Court entered an Order Directing the Joint Administration of the Chapter 11 cases (the “Cases”).

¹ Effective January 1, 2003, TB&F’s Professionals rates were increased as set forth herein.

2. The Debtors continue in possession of their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. On June 14, 2001, the United States Trustee for the Northern District of Illinois (the "U.S. Trustee") appointed a seven (7) member equity shareholder committee pursuant to Section 1102(a)(1) of the Bankruptcy Code.² On that same date, the Equity Committee selected Ronald W. Burkle as Chairperson, and Softbank Technology Ventures, V, L.P., as Vice-Chairperson of the Equity Committee. Thereafter, the Equity Committee selected the firm of Traub, Bonacquist & Fox LLP ("TB&F") as its lead co-counsel, and Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd. ("Goldberg, Kohn"), as co-counsel.

5. Since the appointment of the Equity Committee, TB&F, working with Goldberg, Kohn, diligently represented the Equity Committee's interests in these cases. In late December 2002, when it became increasingly apparent (i) that the Debtors' operations continued to perform below expectations and (ii) that the Debtors (perhaps with the support of one or more of their major creditor constituencies) were intending upon filing a proposed joint plan of reorganization which contemplated little or no recovery prospect for the Debtors' equity security holders, TB&F, in consultation with the members of the Equity Committee and Goldberg Kohn,

² The initial members of the Equity Committee were as follows: Ronald W. Burkle; Softbank Technology Ventures, V, L.P.; Trevor Stores, Inc.; Paul Naz, TR Paul Naz Rev. Liv. Trust; Gerald J. Switzer; Peter Fide; and Frank J. Howrylak. Effective September 30, 2002, Trevor Stores, Inc. resigned from the Equity Committee. Subsequently, Noel Dagenette was appointed to the Equity Committee by the U.S. Trustee. Effective mid-January, 2003, Ronald W. Burkle likewise resigned from the Equity Committee; however, no replacement was designated by the U.S. Trustee.

determined that it was economically and otherwise prudent in the context of these cases to begin to scale back the firm's activities. Subsequently, in or about mid-January 2003, TB&F voluntarily further limited its ongoing role. Shortly thereafter, TB&F completed all of its administrative tasks for the Equity Committee, and its representation of the Equity Committee concluded in an orderly manner, with all remaining matters at that time being transitioned to Goldberg Kohn. The Equity Committee's interests continued to be represented by Goldberg, Kohn throughout the effective date of the plan confirmed herein.

II.

SUMMARY OF PROFESSIONAL COMPENSATION REQUESTED

6. By this Final Application, TB&F respectfully seeks a final award of compensation for professional services rendered for and on behalf of the Equity Committee during the Retention Period in the aggregate amount of \$1,116,832.00. In addition, TB&F seeks a final award of reimbursement of its actual, reasonable and necessary out-of-pocket expenses incurred during the Retention Period in the aggregate amount of \$59,362.46. Outlined below is a summary of previous fee applications filed with the Court and monthly requests for payment submitted to the Debtor for the Retention Period, along with a summary of awards and payment history:

First Interim Fee Application June 14, 2002 through August 31, 2002						
Fees Requested	Expenses Requested	Date of Order	Fees and Expenses Awarded	Fees Paid	Expenses Paid	Unpaid Fees & Expenses
\$492,458.25	\$23,619.23	12/31/02	\$516,077.48	\$437,113.47	\$23,619.23	\$55,344.78

Second Interim Fee Application
September 1, 2002 through December 31, 2002
 (Filed with the Court 3/14/03 - no hearing held)

Fees Requested	Expenses Requested	Date of Order	Fees and Expenses Awarded	Fees Paid by Monthly Requests	Expenses Paid by Monthly Requests	Unpaid Fees & Expenses
\$582,591.75	\$29,820.01	Pending	N/A	\$527,807.97	\$29,820.01	\$54,783.78

Summary of Monthly Requests for Payment - Third Interim Period
January 1, 2003 through March 31, 2003
 (No fee application filed covering this period)

Month	Fees Requested	Expenses Requested	Fees & Expenses Paid	Unpaid Fees Due	Unpaid Expenses
January 2003	\$38,202.00	\$4,909.03	\$39,254.39	\$3,856.65	\$0.00
February 2003	\$3,300.00	\$787.36	\$3,757.36	\$330.00	\$0.00
March 2003	\$280.00	\$226.83	\$478.53	\$28.30	\$0.00
Totals	\$41,782.00	\$5,923.22	\$43,490.28	\$4,214.95	\$0.00

SUMMARY OF UNPAID FEES AND EXPENSES
FOR THE RETENTION PERIOD

FEE PERIOD	FEES DUE	EXPENSES DUE
06/14/02 - 08/31/02	\$55,344.78	\$0.00
9/1/02 - 12/31/02	\$54,783.78	\$0.00
01/01/03 - 03/31/03	\$4,214.95	\$0.00
TOTALS	\$114,343.51	\$0.00

7. In support of TB&F's Application for a final award of professional compensation and expense reimbursement, TB&F submits the following supporting documentation, all of which is incorporated herein by reference:

<u>Exhibit</u>	<u>Description</u>
A	TB&F Retention Order
B	TB&F Attorney Biographies
C	Combined Detailed Daily Narrative Report of Professional Services Performed During the Third Interim Period
D	Summary of Out-of-Pocket Expenses Incurred During the Third Interim Period
E	Rule 2016 Affidavit
F	Proposed Order Authorizing Fees and Expenses

Each of the foregoing reports is prepared and maintained by TB&F in the ordinary course of its business. With regard to Exhibits "C" and "D," respectively, these reports are prepared substantially contemporaneously with the performance of the professional services described or incurrance of the expense for which reimbursement is sought hereby. The hourly time charges set forth herein, and reflected in Exhibit "C," represent the usual and customary rates charged by TB&F to its clients for the types of services rendered herein. All disbursements for which TB&F seeks reimbursement, as set forth in Exhibit "D" hereto, were actually incurred, reasonable, necessary and proper in connection with TB&F's discharge of its duties as counsel to the Equity Committee.

III.

EXPERIENCE AND QUALIFICATION OF TB&F

8. TB&F is a law firm based in New York City with a national practice specializing in commercial law, with a primary emphasis on insolvency, debtor and creditors' rights, and reorganization with a particular emphasis in representation of creditors' committees. TB&F has a national reputation in the bankruptcy field and has been involved in a number of "leading edge" cases in the retail and other industries. A brief biography of the background and experience of each TB&F attorney who rendered services during the Third Interim Period in the Cases is annexed hereto and incorporated herein as Exhibit "B."

9. For time and record keeping purposes and to approximate those suggested categories set forth in the Guidelines promulgated by the Executive Office for United States Trustees, pursuant to the Bankruptcy Reform Act of 1994, dated January 30, 1996 (the "Guidelines"), TB&F has categorized the services it has performed by delineating eighteen (18) categories of tasks, and has billed the time spent on rendering services to those categories. A summary of the services rendered in each category is set forth below. It should be noted that there are instances where the services performed, based on the description of the services, could have been placed in any one of a number of the categories. However, none of the services were billed to or included in more than one category. The following narrative provides a breakdown, by category, of the services rendered by TB&F in the Cases during the Third Interim Period.

IV.

FEE PROCEDURES AND MONTHLY FEE STATEMENTS

10. 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"). Pursuant to Paragraph 1(a) of the Administrative Order, TB&F has previously submitted monthly fee statements to the Debtors for the months of January, February and March, 2003 (for which partial payment has been received), and is submitting this Final Application to those parties required to receive notice under the Administrative Order.

V.

**NARRATIVE DESCRIPTION OF SERVICES PERFORMED
DURING THE THIRD INTERIM PERIOD³**

001 GENERAL ADMINISTRATION

11. The tasks assigned to the General Administration category identified on Exhibit "C" as matter #001 relate to the legal services performed by TB&F during the Third Interim Period in connection with obtaining, reviewing and disseminating copies of miscellaneous pleadings and documents, interoffice conferences, communicating with numerous creditors, equity security holders, or their representative counsel, and various others regarding the status of the Cases, reviewing docket updates, handling administrative matters relating to the Equity Committee and the Cases generally, maintaining document control, and other matters which do not otherwise fit into another category.

12. In compliance with the Guidelines and the Administrative Order, below is a chart that identifies, by professional, the hours each professional spent rendering services in this category, the rate and the aggregate dollar amount charged for such services:

³ As noted previously, TB&F has previously filed two prior interim fee applications for the First and Second Interim Periods, respectively. The First Interim Application was granted. The Second Interim Application remains outstanding. TB&F will not repeat descriptions of all of the services covered by the First and Second Interim Applications herein. Instead, the Court and interested parties are respectfully referred to each such Applications for descriptions of the services in question.

PROFESSIONALS	HOURS	RATE	TOTAL
Paul Traub, Partner (PT)	2.6	\$595.00	\$1,547.00
Steven E. Fox, Partner (SEF)	1.1	\$475.00	\$522.50
Peter G. Lavery, Associate (PGL)	3.3	\$225.00	\$742.50
Andrea Chouprouta, Paralegal (AC)	5.1	\$140.00	\$714.00
Zeinab Hassoun, Docket File Clerk (ZH)	11.5	\$50.00	\$575.00
TOTAL	23.6		\$4,101.00

002 ASSET ANALYSIS AND DISPOSITION

13. The tasks assigned to the Asset Analysis and Disposition category identified on Exhibit "C" as matter #002 consists of services performed by TB&F during the Third Interim Period concerning the evaluation, and from time-to-time, the disposition of certain of the Debtors' assets.

14. In that connection, during the Third Interim Period TB&F reviewed and evaluated numerous motions and other matters pertaining to the rejection closure of certain retail stores, of various non-residential real property and equipment leases, the Debtors' motion seeking an extension of its assumption/rejection deadlines under § 365(d)(4) of the Bankruptcy Code, the sale of certain realty by the Debtors, the formulation and approval of certain procedures concerning the sale of di minnis assets, and miscellaneous other matters relating to the Debtors' assets. In each instance, TB&F was called upon to evaluate the subject transaction from the Equity Committee's perspective, and thereafter provide comments and other valuable input to the Debtors, the Court and other interested constituencies in the Cases.

15. In compliance with the Guidelines and the Administrative Order, below is a chart that identifies, by professional, the hours each professional spent rendering services in this category, the rate and the aggregate dollar amount charged for such services:

PROFESSIONALS	HOURS	RATE	TOTAL
Paul Traub, Partner (PT)	0.4	\$595.00	\$238.00
Steven E. Fox, Partner (SEF)	0.4	\$475.00	\$190.00
Susan F. Balaschak, Partner (SB)	0.2	\$450.00	\$90.00
Peter G. Lavery, Associate (PGL)	2.2	\$225.00	\$495.00
TOTAL	3.2		\$1,013.00

003 EQUITY COMMITTEE COMMUNICATIONS

16. The tasks assigned to the Equity Committee Communications category identified on Exhibit "C" as matter #003 consists of services relating to, among other things, communications, both written and verbal, with members of the Equity Committee and the Equity Committee's other professionals, and development of strategies in the Cases.

17. Throughout the Third Interim Period, TB&F conducted numerous telephonic meetings with the Equity Committee, prepared and circulated agendas and memoranda in preparation therefor, drafted detailed summaries of pending motions and other litigation matters, and prepared status reports advising the Equity Committee of the significant events that had occurred, and where appropriate, recommending courses of action. TB&F has kept the Equity Committee and its members and representatives apprized of all significant developments in these cases.

18. In compliance with the Guidelines and the Administrative Order, below is a chart that identifies, by professional, the hours each professional spent rendering services in this category, the rate and the aggregate dollar amount charged for such services:

PROFESSIONALS	HOURS	RATE	TOTAL
Paul Traub, Partner (PT)	19.8	\$595.00	\$11,781.00
Steven E. Fox, Partner (SEF)	6.5	\$475.00	\$3,087.50

Susan F. Balaschak, Partner (SB)	1.6	\$450.00	\$720.00
Wendy G. Marcari, Associate (WGM)	10.6	\$325.00	\$3,445.00
Peter G. Lavery, Associate (PGL)	0.4	\$225.00	\$90.00
TOTAL	38.9		\$19,123.50

004 EMPLOYEE BENEFITS/PENSIONS

19. During the Third Interim Period, no tasks were assigned to the Employee Benefits/Pensions category.

005 CLAIMS ADMINISTRATION AND OBJECTIONS

20. During the Third Interim Period, no tasks were assigned to the Claims Administration and Objections category.

006 FINANCING/SECURED CREDITOR ISSUES

21. During the Third Interim Period, no tasks were assigned to the Financing/Secured Creditor Issues category.

007 LITIGATION-GENERAL

22. During the Third Interim Period, no tasks were assigned to the Litigation category.

007a LITIGATION-JOINT ISSUES INVESTIGATION

23. During the Third Interim Period, no tasks were assigned to the Litigation - Joint Issues Investigation category.

008 RETENTION APPLICATION PREP AND REVIEW

24. During the Third Interim Period, no tasks were assigned to the Retention Application Prep and Review category.

008a FEE APPLICATION PREP AND REVIEW

25. The tasks assigned to the Fee Application Prep and Review category identified in Exhibit "C" as matter #008a reflects time spent preparing monthly fee statements for TB&F as well as Equity Committee members request for reimbursement of expenses in accordance with the Administrative Order.

26. In compliance with the Guidelines and the Administrative Order, below is a chart that identifies, by professional, the hours each professional spent rendering services in this category, the rate and the aggregate dollar amount charged for such services:

PROFESSIONALS	HOURS	RATE	TOTAL
Steven E. Fox, Partner (SEF)	3.0	\$475.00	\$1,425.00
Susan F. Balaschak, Partner (SB)	0.3	\$450.00	\$135.00
Andrea Chouprouta, Paralegal (AC)	15.8	\$140.00	\$2,212.00
TOTAL	19.1		\$3,772.00

008b JOINT FEE REVIEW COMMITTEE MATTERS

27. The tasks assigned to the Joint Fee Review Committee Matters category identified in Exhibit "C" as matter #008b consist of the review of the time spent attending meetings of the Joint Fee Review Committee regarding the proposed budgets of retained professionals in these Cases in accordance with the Administrative Order.

28. In compliance with the Guidelines and the Administrative Order, below is a chart that identifies, by professional, the hours each professional spent rendering services in this category, the rate and the aggregate dollar amount charged for such services:

PROFESSIONALS	HOURS	RATE	TOTAL
Susan F. Balaschak, Partner (SB)	1.3	\$450.00	\$585.00
TOTAL	1.3		\$585.00

009 COMMUNICATIONS WITH DEBTOR/OFFICIAL COMMITTEES

29. During the Third Interim Period, no tasks were assigned to the Communications with Debtor/Official Committees category.

010 PLAN, DISCLOSURE STATEMENT, EXCLUSIVITY

30. The tasks assigned to the Plan, Disclosure Statement, Exclusivity category identified in Exhibit "C" as matter #010 consist of research performed regarding various plan of reorganization formulative issues, strategies and negotiations concerning the terms thereof.

TB&F also considered various matters pertaining to the Debtors' motion to extend their exclusive periods as it related to the interests of the Equity Committee.

31. In compliance with the Guidelines and the Administrative Order, below is a chart that identifies, by professional, the hours each professional spent rendering services in this category, the rate and the aggregate dollar amount charged for such services:

PROFESSIONALS	HOURS	RATE	TOTAL
Paul Traub, Partner (PT)	19.0	\$595.00	\$11,305.00
Steven E. Fox, Partner (SF)	3.3	\$475.00	\$1,567.50
Susan F. Balaschak, Partner (SB)	0.7	\$450.00	\$315.00
TOTAL	23		\$13,187.50

011 RELIEF FROM STAY

32. During the Third Interim Period, no tasks were assigned to the Relief from Stay category.

012 TRAVEL TIME

33. During the Third Interim Period, no tasks were assigned to the The Travel Time category.

013 SHAREHOLDER INQUIRIES

34. During the Third Interim Period, no tasks were assigned to the Shareholder Inquiries category.

014 COURT HEARING ATTENDANCE

35. During the Third Interim Period, no tasks were assigned to the Court Hearing Attendance category.

015 SCHEDULES/SOFA/U.S. TRUSTEE REPORTS

36. During the Third Interim Period, no tasks were assigned to the Schedules/SOFA/U.S. Trustee Reports category.

VII.

RELIEF REQUESTED

37. In accordance with the Administrative Order, TB&F submitted monthly fee statements to the Debtors for the period covering January, February and March 2003 (the "Monthly Statements"), which statements reflected billed fees in the amount of \$41,782.00 and expenses in the amount of \$5,923.22.

38. Pursuant to the Administrative Order, if no objections are received to a monthly statement within 20 days after service of the monthly statements, the Debtors are authorized to pay 90% of the fees requested and 100% of the expenses incurred. The remaining 10% of fees (the "Holdback") is to be paid after the filing of an interim application with the court; a hearing thereon and the entry of an order approving the fees and expenses incurred during the Third Interim Period. To date, TB&F received payment of 90% of fees incurred during the Third Interim Period in the amount of \$37,567.06 for the monthly statements covering

January through March 2003 and 100% of expenses in the amount of \$5,923.22 for the monthly statements covering January through March 2003.

39. By this Application, TB&F seeks the entry of an order approving its fees and expenses incurred during the Third Interim Period in the amount of \$41,782.00 and \$5,923.22, respectively.

VIII.

APPLICABLE LEGAL STANDARDS

40. Section 330(a) of the Bankruptcy Code provides that a Bankruptcy Court may award to a professional person employed under sections 327 or 1103, "reasonable compensation for actual, necessary services rendered by [such] . . . attorney . . ." 11 U.S.C. §330(a).

41. This section of the Bankruptcy Code largely encompasses prior case law utilizing the lodestar method and the "*Johnson*" factors. *See, Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). Section 330(a) of the Bankruptcy Code, as amended by the Bankruptcy Reform Act of 1994 provides guidelines for awards to professional persons employed under sections 327 or 1103, and it states in pertinent part as follows:

(3)(A) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including -

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed ; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for -

- (i) unnecessary duplication of services; or
- (ii) services that were not -
 - (I) reasonably likely to benefit the Debtors's estate; or
 - (II) necessary to the administration of the case

42. TB&F has supplied the Court with the information necessary to determine the reasonableness of the fees requested as outlined in Bankruptcy Code section 330(a)(3)(A). Exhibit "C" provides detailed records of the actual time spent on the services rendered (¶A). The rates charged by TB&F are set forth on the Fee Application Summary Sheet and in the "Attorney Recap" at the end of each category of time records in Exhibit "C" (¶B). TB&F believes that its summary of the services rendered, together with the details of its time records, shows that the services rendered to the Equity Committee were necessary and/or beneficial to the Equity Committee and these estates at the time the services were rendered (¶C). TB&F further believes that its time records, adequately describe the totality of its services herein and the progress of these Cases, show that TB&F performed its services in a reasonable amount of time, which was commensurate with the task at hand and the nature of these cases (¶D). Finally, TB&F maintains that its rates charged and compensation sought herein are comparable to what TB&F and other legal practitioners seek and obtain from non-bankruptcy clients for engagements of similar complexity (¶E).

43. In addition, TB&F does not seek compensation excluded by Bankruptcy Code section 303(a)(4)(A). There is no unnecessary duplication of services either by TB&F personnel or between TB&F personnel and other professionals working on behalf of the Equity Committee or the Debtors and their estates (§ I). TB&F did not perform services for which compensation is now being sought which services were not "reasonably likely to benefit the debtor's estate." At the time we rendered our services, such a reasonable likelihood existed as to each matter in question.

44. A number of courts still adhere to the *Johnson* test, and accordingly, a number of the *Johnson* factors are reviewed hereinafter.

45. Preclusion of Other Employment. Adequate representation of the Equity Committee in these Chapter 11 Cases has required a substantial commitment of the resources of TB&F. Had TB&F not accepted this engagement, the time spent by it on these Cases could have been devoted to other employment.

46. Time Limitations or Other Circumstances. Many of the matters in these Cases has required attention on an expedited basis.

47. Amounts Involved and Results Obtained. From the outset of these Cases, in order to ensure the highest possible dividend to unsecured creditors, continuous monitoring of the Debtors' activities was required. It is as a result of TB&F's services that a meaningful distribution to unsecured creditors remains a strong possibility.

48. Fee Awards in Similar Cases. The fees requested by TB&F are reasonable and are less than the fees sought and awarded in many similar cases.

49. The Time and Labor Required. TB&F performed its services in a reasonable amount of time, commensurate with the task at hand and the nature of these Cases.

50. The Novelty and Difficulty of the Questions Presented by the Case. The quantitative and qualitative results to the estate of TB&F's representation of the Equity Committee have been amply documented herein and as a result of TB&F's services.

51. The Skills Required to Perform the Legal Service Properly. From the experience and quality of the work produced and the results achieved, it is clear that TB&F has demonstrated that it had the skills and the ability necessary to bring cases such as the instant one to a successful conclusion.

52. The Experience, Reputation and Ability of the Attorneys. The high caliber of the services provided by TB&F and the other professionals involved in these cases are apparent from the results achieved in period of time involved. The parties, as a result of their professionalism have been able to resolve substantially all of their disputes both amicably and in the best interest of these estates without unnecessary court involvement.

53. The Customary Fee for Similar Work. TB&F maintains that its rates charged and compensation sought herein are comparable to what TB&F and other legal practitioners seek and obtain from non-bankruptcy clients in matters of similar complexity.

54. Whether the Fee is Fixed or Contingent. TB&F is not seeking compensation excluded by Bankruptcy Code section 303(a)(4)(A).

55. The Desirability of the Case. Because of the lack of a retainer, there was a significant risk of non-payment if the case proved to be administratively insolvent. For this reason, these are very challenging and interesting cases for TB&F.

56. The Nature and Length of the Professional Relationship with the Client.

TB&F worked, and continues to work closely with the Equity Committee, the Debtors and other key constituencies on these Cases for the last 6 months.

Use of Paraprofessionals

57. Bankruptcy Code Section 330(a)(1)(A) authorizes payment for paraprofessionals. Moreover, the Supreme Court has held that a reasonable attorney's fee under the fee award provisions of other federal statutes includes compensation for the work of paralegals at market rates:

[I]f the prevailing practice in a given community were to bill paralegal time separately at market rates, fees awarded the attorney at market rates for attorney time would not be fully compensatory if the court refused to compensate hours billed by paralegals or did so only at cost.

Missouri v. Jenkins, 491 U.S. 274, 281, 109 S.Ct. 2463, 105 L.Ed.2d. 229 (1989). The Supreme Court also noted that the use of paralegals should be encouraged, because it can result in a more cost-effective delivery of legal services. *Jenkins* at 286. The American Bankruptcy Institute reports that 65% of the judges polled compensate paralegal time at prevailing market rates. *American Bankruptcy Institute Survey*, at 250.

58. In *In re Busy Beaver Building Centers, Inc.*, 19 F.3d 833 (3d.Cir. 1994), the Court of Appeals interpreted even the prior version of Section 330(a) of the Bankruptcy Code to include compensation for paraprofessional services when such services are compensable in the applicant's non-bankruptcy cases, even when such services did not require the exercise of

professional judgment, so long as such use achieved a saving for the estate. *Busy Beaver*, 19 F.3d. at 848-856.

59. The paraprofessionals employed by TB&F in these Cases are highly educated, skilled and trained. TB&F has utilized their abilities wherever possible to minimize the attorney time billed to the estates. TB&F respectfully submits that it is entitled to be compensated for the work of those paraprofessionals at the same rates billed to TB&F's private clients.

IX.

SUMMARY OF EXPENSES INCURRED DURING THE THIRD INTERIM PERIOD

60. During the Third Interim Period, TB&F has been required to incur actual and necessary expenses in connection with the rendition of services on behalf of the Equity Committee in the amount of \$5,923.22.

61. Reimbursable out-of-pocket expenses are those expenses reasonably necessary to accomplish the proper representation of the client. *See In re Wildman*, 72 B.R. 700, 731 (Bankr. N.D.Ill. 1987). TB&F's billing practice is to itemize fully and bill all out-of-pocket expenses reasonably capable of allocation. This cost-accounting practice permits TB&F to charge relatively modest (by New York City standards) hourly rates, because its overhead does not include significant non-chargeable expenses. In short, clients who do not require extensive use of such services do not subsidize clients who do.

62. Exhibit "D" annexed hereto itemizes by category the expenses incurred by TB&F during the Third Interim Period in rendering legal services to the Equity Committee. All

expenses for which reimbursement is sought were incurred in connection with the rendition of professional services to the Equity Committee, and were reasonable and necessary.

63. The Equity Committee has utilized certain services, including overnight couriers and long distance telephone services. There have been occasions when the Equity Committee's members or their individual legal advisers required information and documents on an expedited basis. Although TB&F makes every effort to use regular postal services when possible, overnight delivery of documents and long distance conference calls were occasionally and unavoidably required.

64. TB&F has made every effort to minimize the out-of-pocket expenses incurred in connection with its representation of the Equity Committee in these Cases. TB&F believes the expenditures for which reimbursement is sought herein were appropriate and well warranted. TB&F maintains detailed records of all out-of-pocket expenses incurred in connection with its representation of the Equity Committee. To the extent that such detailed records are necessary, they are available to supplement the summary of charges set forth in Exhibit "D."

65. Under Section 330 of the Bankruptcy Code, a Bankruptcy Court may award to a professional employed by the estates "reasonable compensation for actual, necessary services" rendered by the professional, plus "reimbursement for actual, necessary expenses." See 11 U.S.C. § 330(a)(1). See generally *In re Geraci*, 138 F.3d 314 (7th Cir. 1998); *Matter of Taxman Clothing Company*, 49 F.3d 310 (7th Cir. 1995).

CONCLUSION

WHEREFORE, TB&F respectfully requests that this Court, upon notice and after a hearing, enter an order awarding TB&F a final allowance of professional compensation in the

amount of \$1,116,832.00 and for reimbursement of its out-of-pocket expenses incurred in the amount of \$59,362.46 during the Retention Period which award includes:

(a) ratifying the First Interim Order for services rendered for and on behalf of the Equity Committee during the First Interim Period in the amount of \$492,458.25 and reimbursement of its actual, reasonable and necessary out-of-pocket expenses incurred during the First Interim Period in the amount of \$23,619.23;

(c) awarding TB&F an allowance of compensation for professional services rendered for and on behalf of the Equity Committee during the Second Interim Period in the amount of \$582,591.75 and reimbursement of out-of-pocket expenses incurred during the Second Interim Period in the amount of \$29,820.01;

(c) awarding TB&F an allowance of compensation for professional services rendered for and on behalf of the Equity Committee during the Third Interim Period for in the amount of \$41,782.00 and reimbursement of its actual, reasonable and necessary out-of-pocket expenses incurred in the amount of \$5,923.22; and

(d) such other relief as this Court deems just and proper.

Dated: New York, New York
July 30, 2003

Respectfully submitted,
TRAUB, BONACQUIST & FOX LLP

By: 

Paul Traub, Esq.
Steven E. Fox, Esq.
Susan F. Balaschak, Esq.
655 Third Avenue
New York, New York 10017
Tel. (212) 476-4770

Lead Co-Counsel for the Official Committee
Of Equity Security Holders