

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

OCT 16 2002
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
OCT 15 2002
KENNETH S. GARDNER, CLERK
PB REP. - CS

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

**SECOND INTERIM FEE APPLICATION OF WINSTON & STRAWN,
CO-COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
OF KMART CORPORATION, SEEKING INTERIM ALLOWANCE OF
COMPENSATION AND REIMBURSEMENT OF
EXPENSES UNDER 11 U.S.C. §§ 330 AND 331**

Winston & Strawn (“Winston”), co-counsel to the Official Committee of Unsecured Creditors (the “Committee”)¹ of Kmart Corporation and certain of its domestic subsidiaries and affiliates (collectively, the “Debtors” or “Kmart”), files this application (the “Second Interim Application”) seeking interim allowance and payment, pursuant to, inter alia, 11 U.S.C. §§ 330 and 331, Federal Rule of Bankruptcy Procedure 2016, and Local Rule of Bankruptcy Procedure 607, of compensation totaling \$223,673.50 and expenses totaling \$30,133.44 for legal services rendered and expenses incurred on behalf of the Committee for the period from May 1, 2002 through August 31, 2002 (the “Second Interim Period”). In support of the Second Interim Application, Winston would show as follows:

¹ Winston is co-counsel to the Committee with the law firm of Otterbourg, Steindler, Houston & Rosen, P.C. (“OSHR”), which is lead co-counsel in these cases. OSHR has filed its Second Interim Fee Application contemporaneously herewith (the “OSHR Second Interim Application”). For sake of brevity, the extensive descriptive background contained in the OSIIR Interim Application is not repeated here.

Introduction

1. Winston is a large law firm with over 850 attorneys in Chicago, New York, Washington D.C., Los Angeles, Paris, France and Geneva, Switzerland. Winston is a full-service law firm with specialties including corporate reorganizations and bankruptcy.

2. On June 17, 2002, Winston filed that certain First Interim Fee Application of Winston & Strawn, co-counsel to the Official Committee of Unsecured Creditors of Kmart Corporation, Seeking Interim Allowance of Compensation and Reimbursement of Expenses Under 11 U.S.C. §§ 330 and 331 (the "First Interim Application"), which sought interim allowance and payment of compensation totaling \$277,092.25 and expenses totaling \$23,836.87 for legal services rendered and expenses incurred on behalf of the Committee for the period January 22, 2002 through April 30, 2002.

3. On September 19, 2002, the Court entered that certain Omnibus Order Approving First Applications of Certain Professionals Seeking Allowance of First Interim Compensation and Reimbursement of Expenses Under 11 U.S.C. §§ 330 and 331 for the Period January 22, 2002 through April 30, 2002 (the "First Interim Order").² The First Interim Order granted the First Interim Application and awarded Winston \$300,929.00 in fees and expenses.

4. Pursuant to that certain Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals entered on January 25, 2002 (the "Administrative Order"),³ the Debtors were authorized to pay certain professionals, including Winston, 90% of fees and 100% of disbursements on a monthly basis. During the Second Interim Period, Winston requested \$223,673.50 for professional fees and \$30,133.44 for

² Attached hereto as Exhibit "A."

³ Attached hereto as Exhibit "B."

disbursements, of which, as of the date of the Second Interim Application, \$124,803.45 and \$19,190.46, respectively, were paid pursuant to the Administrative Order. As of the date of the Second Interim Application, Winston is owed \$98,870.05 for professional fees and \$10,942.98 for disbursements incurred during the Second Interim Period, which amounts have not yet been paid. Assuming the current monthly fees and disbursements that are outstanding are paid at the authorized 90% and 100% rates, Winston will be owed \$22,367.35 at the time of hearing on this Second Interim Application, representing solely the “holdback” amounts.

5. As instructed by this Court (the “Court”) pursuant to that certain Order Pursuant to 11 U.S.C. § 105(a) and 331 Establishing a Joint Fee Review Committee,⁴ and in consultation with the United States Trustee’s Office, the Debtors, the Committee, and the Official Financial Institutions’ Committee (the “Finance Committee”), the parties agreed to form a Joint Fee Review Committee (the “JFRC”) comprised of a member of the Committee, a member of the Finance Committee, a member of the Official Committee of Equity Security Holders (the “Equity Committee”), two (2) representatives of the Debtors, and a representative of the Office of the United States Trustee. The JFRC will review the interim fee applications that are filed and attempt to address any issues relating to fees in advance of the objection deadline and file a report with the Court regarding the fee applications. To avoid unnecessary expense, the JFRC agreed that interim fee applications may be filed in an abbreviated format -- i.e., principally, without substantial discussion of legal precedent and citation. Winston files the Second Interim Application in such an abbreviated format in accordance with the agreement of the JFRC.

⁴ Attached hereto as Exhibit “C.”

Background

6. As set forth in the OSIR Interim Application, on January 22, 2002 (the "Petition Date"), Kmart and thirty seven (37) of its affiliates filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code. The Court, on the Petition Date, entered an order for the joint administration of these cases. Kmart and its affiliates have continued in the operation of their businesses and in possession of their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed and no plan of reorganization has been proposed.

7. As of the Petition Date, the Debtors were the nation's second largest discount retailer and the third largest general merchandise retailer with more than 2100 stores in all 50 United States, Puerto Rico, the U.S. Virgin Islands and Guam. Kmart is considered one of the top employers in the United States with approximately \$5.2 billion in annual payroll and benefits and has approximately 240,525 associates worldwide. In addition, Kmart has relationships with more than 4,000 vendors worldwide and is one of the country's largest purchasers of products. According to the Debtors' recently filed 10-K, for the year ending January 30, 2002, Kmart had sales of approximately \$36.1 billion and approximately \$14.2 billion of assets and \$10.8 billion of liabilities. The Debtors' bankruptcy filing is considered by many to be the largest "retail" bankruptcy filing in the history of the United States.

8. The Committee was formed by the United States Trustee on January 31, 2002. The thirteen (13) member Committee includes representatives of a broad spectrum of the Debtors' unsecured creditors, including: (i) vendors of hard goods, video and electronics, and food; (ii) a landlord; (iii) a factor of accounts receivable; and (iv) a governmental regulatory agency. The Committee acts as a fiduciary for holders of unsecured debt in excess of \$4 billion.

9. In addition to the formation of the Committee, the United States Trustee on January 31, 2002 formed the Finance Committee consisting of seven (7) financial institutions holding unsecured debt under various prepetition credit facilities. The Finance Committee designation was subsequently amended, on March 22, 2002, to reflect the resignation of HSBC Bank USA as a member of the Finance Committee, thereby reducing the number of members to six (6).

10. On June 17, 2002, the United States Trustee appointed the Equity Committee, which consists of seven (7) members.

11. Pursuant to an Order entered on March 6, 2002 (the "Retention Order"), the Court approved the employment of Winston as co-counsel to the Committee effective as of January 31, 2002. A copy of the Retention Order is attached hereto as Exhibit "D."

Services Provided During the Second Interim Period

12. The Committee required the assistance and advice of counsel in order to investigate the financial affairs of the Debtors, actively participate in the various hearings and litigated proceedings in these cases, and generally perform its duties under section 1103(c) of the Bankruptcy Code.

13. Two (2) partners, two (2) associates, and five (5) paraprofessionals from Winston participated in the Kmart matter during the Second Interim Period, billing a total of 1000.80 hours and \$223,673.50 in fees. A summary of participating attorneys and paraprofessionals appears below.

<i>Attorney</i>	<i>Year Admitted To Practice</i>	<i>Position</i>	<i>Hours</i>	<i>Hourly Rate³</i>	<i>Amount</i>
Matthew J. Botica	1975	Partner	99.60	\$475.00	\$47,310.00
David W. Wirt	1991	Partner	283.10	\$325.00	\$92,007.50
David A. Agay	2000	Associate	12.30	\$210.00	\$2,583.00
Matthew M. Wawrzyn	2001	Associate	242.30	\$175.00	\$42,402.50

<i>Paraprofessional</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Amount</i>
Paige D. Stepan	49.10	\$130.00	\$6,383.00
Nicole G. Scaravalle	311.80	\$105.00	\$32,739.00
Spencer Hall	1.50	\$110.00	\$165.00
Timothy Woodward	.50	\$125.00	\$62.50
Della Deme	.60	\$35.00	\$21.00

14. For the Second Interim Period, the blended rate for attorneys was \$289.19, and the blended rate for paraprofessionals was \$108.31. In addition, these amounts represent a voluntary reduction of \$2,983.75 in fees in relation to case staffing and organizational issues.

15. During the Second Interim Period, Winston attorneys counseled the Committee in a wide range of matters affecting the value of the estates and the rights of creditors. The most significant of these matters included the following: legal analysis and advice respecting local practice, procedure and Seventh Circuit precedent; organizational preparation for omnibus and other hearings (performed mostly by paraprofessionals and junior associates); assisting in representation of the Committee in connection with real estate issues and store closings; regular participation in Committee meetings and bankruptcy hearings; coordination with U.S. Trustee's Office regarding requested protocols and procedure compliance. In addition, Winston attorneys represented the Committee in a number of miscellaneous matters arising out of Kmart's reorganization proceedings. The following is a summary of Winston's requested fees by fee category:

³ The "Hourly Rate" represents the normal hourly rate charged for the attorney's or paraprofessional's service.