

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

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

EON MAR 18 2003

**THIRD 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 "Third 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 \$619,973.10 and expenses totaling \$71,405.72 for legal services rendered and expenses incurred on behalf of the Committee for the period from September 1, 2002 through December 31, 2002 (the "Third Interim Period"). In support of the Third Interim Application, Winston would show as follows:

FILED
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NORTHERN DISTRICT OF ILLINOIS

MAR 17 2003

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

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 Third Interim Fee Application contemporaneously herewith (the "OSHR 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, San Francisco, 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, 2002,² which granted the First Interim Application and awarded Winston \$300,929.00 in fees and expenses.

4. On October 15, 2002, Winston filed that certain 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 (the "Second Interim Application"), which sought interim allowance and payment of compensation totaling \$223,673.50 and expenses totaling

² Attached hereto as Exhibit "A."

\$30,133.44 for legal services rendered and expenses incurred on behalf of the Committee for the period of May 1, 2002 through August 31, 2002.

5. On December 31, 2002, the Court entered that certain Omnibus Order Approving Applications of Certain Professionals Seeking Allowance of Interim Compensation and Reimbursement of Expenses Under 11 U.S.C. §§ 328, 330, 331 and/or 363 for the Period May 1, 2002 through August 31, 2002,³ which granted the Second Interim Fee Application and awarded Winston \$253,807.00 in fees and expenses.

6. 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"),⁴ the Debtors were authorized to pay certain professionals, including Winston, 90% of fees and 100% of disbursements on a monthly basis. During the Third Interim Period, Winston requested \$624,227.00 for professional fees and \$71,405.72 for disbursements, of which, as of the date of the Third Interim Application, \$561,804.30 and \$71,405.72, respectively, were paid pursuant to the Administrative Order. As of the date of the Third Interim Application, and in view of a \$4,253.90 voluntary reduction, Winston is owed \$58,168.80 for professional fees and \$0 for disbursements incurred during the Third Interim Period. Thus, Winston will be owed \$58,168.80 at the time of hearing on this Third Interim Application, representing solely the "holdback" amounts.

7. As instructed by the Court pursuant to that certain Order Pursuant to 11 U.S.C. § 105(a) and 331 Establishing a Joint Fee Review Committee,⁵ and in consultation with

³ Attached hereto as Exhibit "B."

⁴ Attached hereto as Exhibit "C."

⁵ Attached hereto as Exhibit "D."

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 Third Interim Application in such an abbreviated format in accordance with the agreement of the JFRC.

Background

8. As set forth in the OSHR 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.

9. On February 25, 2003, the Debtors filed that certain First Amended Joint Plan of Reorganization of Kmart Corporation and its Affiliated Debtors and Debtors-In-Possession (the "Plan"). By order dated February 25, 2003, the Court approved the following: the disclosure statement pertaining to the Plan; the voting record date, voting deadline, and procedures for the temporary allowance of certain claims for voting purposes; procedures for

filing objections to the Plan; solicitation procedures for confirmation of the Plan; and, a hearing date to consider confirmation of the Plan, scheduled to be held April 14, 2003.

10. As of the Pctition 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' 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.

11. 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.

12. 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 has been subsequently amended on several occasions to reflect resignations and new appointments. There are currently five (5) members on the Finance Committee.

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

14. 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 "E."

Services Provided During the Third Interim Period

15. 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, review the Plan, and generally perform its duties under section 1103(c) of the Bankruptcy Code.

16. Five (5) partners, seven (7) associates, and eight (8) paraprofessionals from Winston participated in the Kmart matter during the Third Interim Period, billing a total of 2,367.60 hours and \$619,995.00 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 Rate⁶</i>	<i>Amount</i>
Matthew J. Botica	1975	Partner	195.80	\$475.00	\$93,005.00
Mark L. Rotert	1977	Partner	194.80	\$475.00	\$92,530.00
Thomas A. Reynolds III	1977	Partner	265.70	\$450.00	\$119,565.00
Catherine W. Joyce	1988	Partner	44.00	\$400.00	\$17,600.00
David W. Wirt	1991	Partner	247.50	\$325.00	\$80,437.50
Norman K. Beck	1995	Associate	97.10	\$275.00	\$26,702.50
Karen C. Quirk	1995	Associate	125.10	\$275.00	\$34,430.00
Rodger L. Gardy	1996	Associate	136.60	\$260.00	\$35,516.00
Daniel J. McGuire	1995	Associate	11.00	\$275.00	\$3,025.00
David A. Agay	2000	Associate	33.90	\$210.00	\$7,119.00
Jerome H. Sturhahn	2001	Associate	56.30	\$175.00	\$9,852.50
Matthew M. Wawrzyn	2001	Associate	108.40	\$175.00	\$18,970.00

<i>Paraprofessional</i>	<i>Hours</i>	<i>Hourly Rate</i>	<i>Amount</i>
Dina Metz	135.30	\$125.00	\$16,912.50
G. Curt Myers	218.10	\$115.00	\$25,081.50
Nicole G. Scaravalle	208.20	\$105.00	\$21,861.00
Sarah Ritchie	32.30	\$60.00	\$1,938.00
Andrew Rushing	19.00	\$60.00	\$1,140.00
Justin Lewicky	199.10	\$60.00	\$11,946.00
Sara Elberts	36.60	\$60.00	\$2,196.00
Shana Hertz	2.80	\$60.00	\$168.00

17. For the Third Interim Period, the blended rate for attorneys was \$355.33, and the blended rate for paraprofessionals was \$95.42.

⁶ The "Hourly Rate" represents the normal hourly rate charged for the attorney's or paraprofessional's service.