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Return Date:
April 22, 1999
Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
: Chapter 11
In re: :
: Case No. 95 B 42777
BRADLEES STORES, INC., et al., : through 95 B 42784 (BRL)
: :
Debtors. : (Jointly Administered)
- - - - - X

**APPLICATION FOR FINAL ALLOWANCE
OF COMPENSATION OF OTTERBOURG, STEINDLER,
HOUSTON & ROSEN, P.C., COUNSEL TO THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

TO: THE HONORABLE BURTON R. LIFLAND,
UNITED STATES BANKRUPTCY JUDGE:

Otterbourg, Steindler, Houston & Rosen, P.C.
("Applicant"), counsel to the Official Committee of Unsecured
Creditors ("Committee") of Bradlees Stores, Inc., ("Stores"),
Bradlees, Inc. ("Parent"), New Horizons of Yonkers, Inc.,
Bradlees Administrative Co., Inc., Dostra Realty Co., Inc.,
Maximedia Services, Inc., New Horizons of Bruckner, Inc., and
New Horizons of Westbury, Inc., debtors and debtors-in-

possession herein (all collectively, "Bradlees"), respectfully represents and alleges:

I. INTRODUCTION

1. Applicant, as counsel to the Committee, makes this Application for payment of professional fees for services rendered and expenses incurred in its representation of the Committee pursuant to Sections 330 and 331 of Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 2016(a).

2. This Final Application is submitted in support of an award of final compensation and reimbursement of expenses in the respective amounts of \$4,936,132.00 and \$15,856.13. The final award of compensation and reimbursement of expenses consists of the following components:

(a) The allowance of compensation for services rendered and disbursements incurred from January 1, 1999 through and including April 22, 1999 ("Last Fee Period") in the amount of \$155,222.50 for professional fees (consisting of \$120,222.50 for the period from January 1, 1999 through February 28, 1999 and an estimate of \$35,000 for services rendered or to be rendered from March 1, 1999 through and including April 22, 1999 in connection with the final fee application process) and

disbursements in the amount of \$15,856.13 (consisting of \$12,856.13 incurred from January 1, 1999 through February 28, 1999 and an estimate of \$3,000 for disbursements incurred or to be incurred from March 1, 1999 through and including April 22, 1999 in connection with the final fee application process).¹

(b) The allowance of \$84,381.00 for 332.1 hours of professional services performed by Applicant during the period from September 21, 1995 through September 30, 1995 (the "Stub Period") which fees have not been previously awarded to Applicant.²

(c) The "final" allowance of each of the prior interim awards of fees and reimbursement of disbursements aggregating \$4,936,132.00 for fees (including \$173,411.70 in fees which was previously awarded by held back pursuant to prior

¹ Several days prior to the hearing date on this Final Fee Application, Applicant will submit time detail for the period from March 1, 1999 through approximately April 15, 1999. Through February 28, 1999, 286.30 hours of professional time and 92.40 hours of paraprofessional time were expended by Applicant and the blended hourly rate for professionals is approximately \$376.00.

² Applicant incorporates by reference the description of the services rendered during the Stub Period as set forth in the Application for Allowance of Compensation of Applicant for the First Interim Period ("First Interim Application") and the Affidavit of Glenn B. Rice in Further Support of the First Interim Application, dated December 14, 1995.

interim fee orders) and \$15,856.13 for disbursements, granted to Applicant pursuant to prior interim fee orders of this Court.

3. The filing of this Final Application was preceded by twelve (12) applications for interim allowance that are on file with the Clerk of the Court and have been previously reviewed by this Court. Annexed hereto as Exhibit "A" is a schedule which reflects the amount of interim fees and disbursements previously sought by Applicant and the corresponding awards granted by the Court.

II. BACKGROUND

4. On June 23, 1995 ("Petition Date"), Stores and eight of its affiliates each filed voluntary petitions for relief under the Bankruptcy Code. The Debtors operated their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner was appointed during these cases.

5. As of the Petition Date, Stores was a discount retail merchandiser operating 136 discount retail department stores in the nine northeastern States and the combined business enterprises of the Debtors produced retail sales of approximately \$1.9 billion for the fiscal year ended January 28, 1995. Upon emergence from Chapter 11, more than three and one-

half (3 1/2) years later, Stores operated 103 discount retail department stores and the combined business enterprises of the Debtors was expected to produce retail sales of approximately \$1.3 billion for the fiscal year ended February 1, 1999.

6. The Office of the United States Trustee appointed a thirteen (13) member consolidated Committee on or about July 6, 1995. The Committee consisted of trade creditors, bondholders, a labor union and a landlord with claims against both Stores and/or Parent. The Committee retained Applicant as counsel pursuant to an Order of this Court dated August 15, 1995 (which Order was effective as of July 6, 1995, the date the Committee was appointed).

7. These cases presented Bradlees, the Committee, other creditors and the Court with complicated legal and factual issues which needed to be extensively examined as part of the efforts by the Debtors and creditors to achieve the goal of reorganization.

8. When these Chapter 11 cases were filed on June 23, 1995, the challenges facing Bradlees and its creditors, including the unsecured creditors represented by the Committee, were extensive, and would only become more complicated during the first stages of these bankruptcy cases. As discussed in

detail below, Applicant has successfully utilized its skills in the bankruptcy process resulting in a meaningful recovery for the unsecured creditors. Ultimately, Applicant's efforts resulted in approximately a 19% distribution to the unsecured creditors of Stores (other than claims arising from the pre-petition revolver facility and the pre-petition construction financing facility) which distribution included cash and stock of reorganized Parent, aggregating roughly fifty (50%) percent of the equity and some of the cash available for distribution under the Second Amended Plan (as hereinafter defined) and the unsecured creditors of Parent received warrants to purchase 1,000,000 shares of Parent.

9. Applicant, as counsel to the Committee, played a pivotal role throughout these reorganization cases in order to protect the rights of unsecured creditors. Applicant worked closely with the Committee's accountants and investment bankers, as well as the Debtors, the Unofficial Committee of Trade Claim Holders (the "Unofficial Committee"), Bankers Trust Company, the senior bank agent for the pre-petition revolver facility and the pre-petition construction financing facility (the "Senior Bank Agent") and the purchasers of a majority of the pre-petition revolver debt (the "Bank Debt Holders") in order to further the Debtors' rehabilitative goals.

10. Applicant utilized attorneys with insolvency, real estate, corporate restructuring and litigation expertise in order to address the novel complex areas of the law presented by these cases. Applicant was required to devote substantial time and energy to these cases, although every effort was made to keep the time expended to the lowest amount consistent with Applicant's responsibilities. Applicant achieved these results without any unnecessary duplication and cooperated with the Court and other professionals to allocate extensive and time-consuming analyses of the legal and factual issues involved in these cases.

11. The confirmation of the Debtors' Second Amended Joint Plan of Reorganization (together with the Yonkers Plan (as hereinafter defined), the "Second Amended Plan") on January 27, 1999, represented the culmination of substantial efforts by Bradlees, the Committee, the Unofficial Committee, the Senior Bank Agent, and the Bank Debt Holders to negotiate a consensual Plan of Reorganization, which provides a significant recovery to all creditors, and the emergence of a reorganized Bradlees from Chapter 11 on February 2, 1999.

III. PROFESSIONAL SERVICES RENDERED

A. LAST FEE PERIOD

12. As a result of Applicant's services during the Last Fee Period, the Committee's understanding of the issues presented by these cases was greatly facilitated, enabling the Committee to promptly and effectively address the matters related to the reorganization of these estates, resulting in confirmation of the Debtors' Second Amended Plan, by Order dated January 27, 1999. The services rendered resulted in the following:

(a) review and analysis of the Debtors' Second Amended Plan and modifications thereto and negotiations with the various parties in interest concerning same to enable the Debtors to confirm a plan(s) and emerge from Chapter 11;

(b) negotiation and review of the Debtors' Exit Financing Facility (as hereinafter defined), and preparation, review and negotiation of documents related to the Vendor Lien (as hereinafter defined) to be granted to Stores' trade vendors which will encourage credit support from the trade vendor community; and

(c) assistance in connection with the Debtors' claims reconciliation efforts, including approval of settlements

to foster the Debtors' ability to make prompt distributions to creditors under the plan.

13. In conformity with the June 20, 1991 and April 19, 1995 administrative orders ("Administrative Orders"), and to assist the Court, the Debtors, the United States Trustee, and other parties in interest in evaluating this Application for compensation, annexed hereto as Exhibit "B" is a summary sheet of the attorneys and paraprofessionals and their corresponding initials, billing rates and the number of hours incurred by each for the Last Fee Period through February 28, 1999. Annexed hereto as Exhibit "C" is a summary sheet that identifies the services performed by Applicant's professionals and paraprofessionals categorized into "project codes" that group time entries by subject area, together with Applicant's computerized time records, also grouped by project code.³ (Applicant will file and serve time detail and summaries for the period from March 1, 1999 through approximately April 15, 1999 several days before the final fee hearing.)

14. Pursuant to Order dated February 18, 1997 and as set forth in the monthly statement dated February 22, 1999,

³ Attached hereto as Exhibit "D" is a chart which sets forth Applicant's actual professional fees by budget category for the Last Fee Period from January 1, 1999 through February 28, 1999.

Applicant has requested payment from Bradlees of \$89,971.60 in professional fees (representing eighty (80%) of \$112,464.50) and \$9,542.93 in expenses for the period from January 1, 1999 through and including the Effective Date. As of the date hereof, Applicant has not received payment with respect to these amounts which are included in the amounts set forth in Paragraph 2(a) above for the Last Fee Period.

15. In accordance with the Administrative Orders, a computerized printout of Applicant's disbursements necessarily incurred in the performance of Applicant's duties as counsel to the Committee is annexed hereto as Exhibit "E". Applicant's Certification pursuant to the Administrative Orders is annexed hereto as Exhibit "F".

16. Set forth below, is a brief recitation of certain of the professional services rendered by Applicant in the Last Fee Period. The following presentation is not intended to be a complete statement of all professional services rendered, but serves only to list certain of the services of major importance rendered by Applicant during the Last Fee Period:

(a) **Plan of Reorganization.**

17. During the Last Fee Period, Applicant expended a significant amount of time reviewing and negotiating numerous issues relating to the Debtors' proposed plans in order to enable the Debtors to confirm a plan(s) of reorganization and emerge from chapter 11 by February 2, 1999, the beginning of the Debtors' next fiscal year. On January 6, 1999, the Debtors filed a Motion to modify the Plan and to confirm the Second Amended Plan. The Motion was intended by the Debtors to address the infirmities of the Debtors' First Amended and Modified Joint Plan identified in District Court Judge Preska's December 23, 1998 decision vacating the November 18, 1998 Order confirming the Debtors' First Amended and Modified Joint Plan. Applicant conferred extensively with the Debtors, the Committee and representatives of the other creditor constituencies regarding the proposed amendments, and provided written comments on the Second Amended Plan.

18. In response to this Motion, Greenwich Holdings, Inc. ("Greenwich"), the landlord of the Union Square store, and Acklinis Associates, the landlord of the Yonkers, New York store, filed objections to the provisions of the Second Amended Plan relating to the treatment of each of their leases. Virtually on a daily basis, Applicant conferred with the

Committee, the Debtors' representatives and representatives of the other creditor constituencies to discuss strategies to address the landlords' objections. The Debtors, in consultation with the creditor constituencies, determined to further amend the First Amended Plan to provide for assumption and assignment of the Union Square lease and to provide for a separate plan for New Horizons of Yonkers, Inc., the affiliate which held the lease for the Yonkers store ("Yonkers Plan"). Applicant reviewed and provided comments to the further amendments to the Second Amended Plan. Applicant also reviewed and provided comments on the Orders confirming Bradlees Second Amended Plan and the Yonkers Plan.

19. Applicant attended the January 27, 1999 hearing on confirmation and participated in negotiations which took place in Bankruptcy Court most of that day which resulted in withdrawal of the landlords' objections and confirmation of the Second Amended Plan.

20. After the entry of the Confirmation Orders, Applicant conferred with the Debtors, the other creditor constituencies, and the Committee to insure that each of the conditions to the "Effective Date" were satisfied. One of the conditions to the "Effective Date" was that the Committee, as well as the other creditor constituencies, approve the exhibits

to the Plan. The exhibits included all corporate governance and exit financing documentation. During the week between the January 27th confirmation hearing and the February 2nd "Effective Date" of the Plan, Applicant reviewed and provided comments to the following exhibits and related documents: Articles of Incorporation and Bylaws for Parent and Stores, the Warrant Agreement with respect to the warrants to be issued under the Second Amended Plan, the Registration Statement, Leasehold Mortgage and Security Agreement and Trust Indenture with respect to the notes to be issued under the Second Amended Plan and Credit Agreement by and among BankBoston Retail Finance, Inc. ("Senior Lender") and the Debtors ("the Exit Financing Facility").

21. In addition, as described infra, Applicant prepared the Collateral Trust Agreement and related documents with respect to the lien on inventory to be granted by Stores for the benefit of trade vendors ("Vendor Lien") upon the Effective Date of the Second Amended Plan.

22. The Second Amended Plan also provided that the Committee was permitted to select one member of Parent's new Board of Directors and two others jointly with the Unofficial Committee and Bank Debt Holders. Applicant conferred with representatives of the Debtors, the Bank Debt Holders and

Unofficial Committee concerning the process of selecting Board Members. Applicant also conferred with the Committee designees.

(b) **Exit Financing Facility and Vendor Lien.**

23. The Second Amended Plan required, as a condition to the "Effective Date", that Stores grant the Vendor Lien to trade vendors who will provide retail merchandise to the reorganized Stores. The Vendor Lien is a lien on inventory, subordinate to the liens securing the Exit Financing Facility. To create the Vendor Lien, Applicant prepared, among other documents, the Collateral Trust Agreement by and among Stores and M.J. Sherman & Associates, Inc., as Trustee for the trade vendors (the "Trustee") and the Inventory Security Agreement by and between Stores and the Trustee.

24. Although Applicant had circulated a draft of the Collateral Trust Agreement and related agreements in advance of the confirmation hearing, the Senior Lender only turned its attention to the Vendor Lien documentation shortly after the confirmation hearing held on January 27, 1999, when the Exit Financing Facility was finalized. To enable to Debtors to "go effective" pursuant to the Second Amended Plan as quickly as possible, Applicant was forced to devote significant time to quickly address the issues remaining with respect to the Vendor Lien in the days immediately preceding the Effective Date.

25. Applicant communicated with the Committee, the Debtors and the Senior Lender concerning the Exit Financing Facility and related agreements. Applicant also conferred with the Senior Lender and the Debtor regarding the Collateral Trust Agreement, Inventory Security Agreement, Subordination Agreement by and between the Trustee and the Senior Lender and UCC filings, to address issues relating to, among other things, the priority of the liens and security interests of the Senior Lender and the Trustee. Applicant finalized the documents in an expedited time frame and attended the closing of the Exit Financing Facility on the Effective Date.

(c) **Operations.**

26. Applicant reviewed and analyzed: detailed financial information and reports relating to the finances and business operations of the Debtors prepared by the Committee financial advisors; and liquidity and availability reports.

(d) **Claims Administration.**

27. Applicant reviewed and analyzed: Debtors' Twelfth, Thirteenth and Fourteenth Omnibus Claims Objections; and Debtors' overall progress on reconciling claims. Applicant and the Committee focused on this aspect of the cases to insure that the Debtors were able to satisfy one of the conditions

precedent to the Debtors emergence from Chapter 11, a claims level of \$300 million, or less.

(e) **Committee Meetings.**

28. In addition to regular oral and written communications with the Committee's financial advisors, the Committee Co-chairpersons and other Committee members, Applicant organized and participated in Committee conference calls on the following dates: January 8, 1999 and January 25, 1999.

(f) **Case Administration.**

29. Applicant attended the Budget/Fee Review Committee meeting on February 26, 1999, reviewed the Twelfth Interim Fee applications filed by the other professionals in these cases, prepared Applicant's Twelfth Interim Fee Application, monthly fee statement, the Twelfth Committee Reimbursement Application, the Report of the Budget/Fee Committee dated on or about March 8, 1999, this final fee application and the Thirteenth Applications requesting reimbursement of expenses dated March 18, 1999. Applicant also attended the hearing on the Twelfth Interim Fee Application which was held on March 11, 1999 and Applicant intends to attend the hearing on Final Fee Applications which is scheduled for April 22, 1999.

B. FINAL ALLOWANCE

30. Applicant does not wish to burden the Court with an overly detailed or lengthy recitation of each and every matter as to which it has rendered services to the Committee over the last three and one half years. Accordingly, the following is intended to serve only as a summary description of some of the primary services rendered by Applicant to highlight the benefits that are a result of Applicant's efforts. In main, the Committee directed Applicant to focus on formulating a consensual chapter 11 plan, eliminating litigation with respect to issues that could be resolved pursuant to that plan and encouraging the resolution of claims reconciliation issues as quickly as possible.

(a) **Plan Negotiations.**

31. The consolidated Committee, consisting of creditors of Parent (the holding company) and Stores (the operating company), was committed to a consensual plan of reorganization from the outset of these cases. The Committee, with Applicant's assistance, analyzed the following issues which faced these estates and had to be compromised in order to confirm a consensual plan:

- (i) the capitalization of Stores' subsidiaries;

(ii) possible recharacterization or reduction of the Intercompany Claim (as hereinafter defined), the primary asset of Parent;

(iii) possible claims of the estates against third parties as a result of the IPO Transaction (as hereinafter defined);

(iv) the secured status of the pre-petition revolver facility and amount of the claim including, entitlement to and application of adequate protection payments;

(v) the possible avoidance of the guarantees by the Stores subsidiaries given to the pre-petition revolver facility bank group;

(vi) marshalling issues by and among the various creditors;

(vii) possible substantive consolidation of the estates;

(vii) Parent's and Stores' competing claims to a tax refund; and

(viii) the possible avoidance of the guarantees by the Stores subsidiaries given to the pre-petition construction financing facility bank group.

32. During the Summer of 1996, Applicant spent a significant amount of time discussing plan concepts with

representatives of the major creditor constituencies as part of the Creditors' Working Group. At that point, the Creditors' Working Group was comprised of the Senior Bank Agent, the Unofficial Committee and the Committee. The Creditors' Working Group represented substantially all of the \$570 million of debt in these cases as follows: (i) the Committee represented all of the unsecured debt, including without limitation, the \$225 million of bond debt and \$251 million of trade, lease rejection and other unsecured claims; (ii) the Senior Bank Agent represented approximately \$76 million of principal obligations of the pre-petition revolver and approximately \$18 million for the pre-petition construction financing facility; and (iii) the Unofficial Committee represented holders of approximately \$50 million of unsecured claims purchased from original holders.

33. Throughout these cases, at the request of the Committee, Applicant also spent a significant amount of time exploring alternative exit strategies for the Debtors' emergence from chapter 11.

34. Applicant participated in frequent meetings of the Creditors' Working Group throughout the summer of 1996 and into 1997. These meetings focused all of the Debtors creditors on the key issues which had to be resolved in order for a consensual plan to be possible. During this period, Applicant

engaged in extensive preparation for all of these meetings by reviewing the legal and factual issues described above and reviewed the analyses and settlement proposals prepared by the various of the creditor groups and the Debtors.

35. In January 1997, following a change in management of Bradlees supported by the creditors, the creditors were asked to consent to an extension of exclusivity to permit the Debtors' new management team time to address the Debtors' poor operating results. The creditors agreed to the Debtors request. During the balance of 1997, Applicant negotiated extensively with the members of the Debtors and the members of the Creditors' Working Group including, a new participant, representatives of the purchasers of the majority of the pre-petition revolver debt, the Bank Debt Holders, concerning the term sheet proposed by this group and the Unofficial Committee.

36. Following entry of an Order dated December 22, 1997 which required that the Debtors file a plan by April, 1998, Applicant, the Debtors and the other creditor groups spent a significant amount of time analyzing the proposed term sheet and other open plan issues. Applicant reviewed and analyzed a draft of the Debtors' proposed plan or reorganization as well as versions of the disclosure statement filed with the Bankruptcy Court on April 13, 1998. Applicant communicated extensively

with the Committee, the Debtors and the other creditor constituencies concerning the Debtors' proposed plan regarding, among other things, issues related to the proposed management emergence bonus programs, the Vendor Lien, a proposed litigation trust with respect to possible claims against the Debtors' officers and directors, distribution issues to Parent's creditors and claims reconciliation issues and procedures.

37. Applicant also participated in intensive negotiations with the other creditors concerning the amount of the Intercompany Claim, the application of the adequate protection payments paid by the Debtors to the Senior Bank Agent for the benefit of the pre-petition revolver financing facility claimants, distribution proposals advanced by certain bondholder members of the Committee and resolutions of issues relating to the pre-petition construction financing facility.

38. Following numerous meetings with the Committee and a plan subcommittee thereof, Applicant provided the Debtors and the other creditor constituencies with extensive written comments on the Debtors' plan of reorganization and disclosure statement, dated April 13, 1998. Applicant prepared various memoranda containing plan comments, suggestions and revisions in order to focus the various parties in interest on the resolution of open plan issues.

39. Applicant undertook an extensive written analysis of the issues related to the proposed litigation trust and communicated extensively with the other parties concerning the Applicant's analysis of these issues. To address the comments of, among others, the Committee, the Debtors filed a draft of the Debtors' First Amended Joint Plan of Reorganization, dated on or about June 5, 1998 ("First Amended Plan"). Applicant reviewed and provided further comments upon the First Amended Plan. Applicant continued to engage in a dialogue with the various parties and the Debtors to encourage resolution of the outstanding issues and circulated suggestions for a resolution of the senior management emergence bonus issue which was satisfactory to the Committee.

40. In July 1998, when no further progress could be made concerning the resolution of the remaining open issues, Applicant and the Unofficial Committee redrafted the entire plan of reorganization to include provisions agreed upon by the Committee, the Unofficial Committee and the Bank Debt Holders. Ultimately, after receiving these further proposed modifications, the Debtors agreed to adopt most of the provisions that all of the creditors supported. By this point, a consensus had been reached with respect to: (i) distribution to the unsecured creditors of Parent; (ii) the amount of the

Intercompany Claim; (iii) the amount and distribution upon the claim of the Bank Debt Holders and application of adequate protection payments; and (iv) the amounts of certain claims related to the off-balance sheet properties.

41. By Order dated August 18, 1998, the Bankruptcy Court appointed a mediator to resolve the remaining plan issues including, cash emergence bonuses for senior management. Applicant prepared submissions to the mediator, participated in mediation sessions and reviewed the submissions of the other parties in interest. Following these efforts and those of the mediator and the other participants, the creditors and the Debtors reached an agreement concerning distributions.

42. Applicant provided extensive written comments on numerous drafts of the disclosure statement for the Debtors' First Amended Plan and attended the September 25, 1998, hearing on such disclosure statement. The disclosure statement was approved by Order dated October 5, 1998.

43. Throughout the fall of 1998, Applicant focused on the requirements for effectiveness of the plan, including emergence financing and the condition that allowed unsecured claims could not exceed \$300 million at Stores. Applicant also reviewed numerous motions related to the voting, solicitation

and distribution processes, including the following: (i) the Debtors' motion to fix a record date for voting purposes and for approval of voting and solicitation procedures; (ii) motions by various creditors for estimation of claims for voting purposes; and (iii) Debtors' motions to estimate landlord and tort claims for distribution purposes. Applicant also reviewed the Debtors' solicitation package and communicated extensively with unsecured creditors in these cases regarding the plan of reorganization and disclosure statement.

44. In October and November 1998, Applicant communicated with the Committee, the Debtors and the other creditors concerning various objections filed by parties in interest to the First Amended Plan and reviewed and analyzed plan modifications proposed by the Debtors to address such objections. Applicant reviewed the Debtors' revised plan which was intended to address certain objections to the First Amended Plan and the Confirmation Order. Applicant also attended the hearing held on November 18, 1998 whereupon the Bankruptcy Court confirmed the Debtors' First Amended and Modified Joint Plan of Reorganization.

45. Applicant reviewed and analyzed the documents related to the Notice of Appeal and motion for a stay pending appeal which were filed by Greenwich. Applicant consulted with

the Committee, the Debtors and the other creditor constituents extensively concerning the appeal of the Confirmation Order, and possible ways to resolve the dispute. Applicant also attended the oral argument on the motion filed by Greenwich for a stay pending appeal which stay was granted pending oral argument on the merits of the appeal. Applicant then attended the hearing on the appeal and reviewed the decision of the District Court which reversed the Confirmation Order and the Debtors' proposed motions and proposals to modify its First Amended Plan in light of the District Court's decision, including, the proposed Order to Show Cause to Modify Joint Plan of Reorganization and for Confirmation of the Plan, as amended.

46. Just prior to the Debtors' emergence and in addition to those tasks described in Section A, Paragraphs 17-22 above, Applicant consulted with the Committee and other creditor constituencies concerning nominations for the new Board of Directors of Parent. Pursuant to the First Amended Plan, the Committee was permitted to select one member of Parent's new board, and two others jointly with the Unofficial Committee and the Bank Debt Holders. Applicant contacted potential nominees, conducted interviews with the Committee and provided information to such nominees with respect to the Debtors.

47. Ultimately, the Second Amended Plan was confirmed on January 27, 1999 and was declared effective on February 2, 1999.

(b) **Financing.**

48. On the Petition Date, the Debtors entered into a Revolving Credit and Guarantee Agreement (the "Original Credit Agreement") with Chemical Bank (now known as Chase Manhattan Bank) to provide Stores, as Borrower, with Chapter 11 financing. The Original Credit Agreement permitted the Debtors to borrow up to \$250 million, with all obligations under the Credit Agreement subject to guarantees signed by the remaining Debtors.

49. With Applicant's assistance, the Committee analyzed numerous provisions of the Original Credit Agreement which would impact relations with vendors, including provisions which might have limited the Debtors' ability to implement return to vendor programs, satisfy reclamation claims and/or make adequate protection payments.

50. Following the approval of the Original Credit Agreement, Bradlees sought to amend the facility a total of six (6) times. These changes included modifying the financial covenants, extending the term of the agreement and reducing the maximum credit amount. Applicant analyzed each amendment and

consulted the Committee concerning any impact on the Debtors' business, including trade community support.

51. In or about October 1997, Bradlees sought to implement a new \$250 million debtor-in-possession financing facility ("New Facility") which included terms for an exit financing facility with the Senior Lender. Applicant reviewed the New Facility and consulted with the Committee and the Debtors concerning same. The New Facility was approved by Order dated on or about December 23, 1997.

52. As the Debtors prepared to emerge from Chapter 11, Applicant communicated with the Committee and the Debtors concerning the proposed Exit Financing Facility by and among the Debtors and the Senior Lender and related agreements. Applicant also consulted with the Committee's financial advisors concerning the Debtors' projections and other financial requirements of the Exit Financing Facility and communicated with the Committee regarding same.

53. To promote Stores' ability to receive trade vendors support upon emergence from Chapter 11, as set forth above in Section A hereof, Applicant also drafted the Collateral Trust Agreement by and among Stores and the Trustee and the Inventory Security Agreement by and between Stores and the

Trustee each with respect to the Vendor Lien to be granted by Stores to the Trustee for the benefit of trade vendors upon the Effective Date of the Debtors' plan(s).

(c) **Corporate Structure and Intercompany Claim.**

54. Applicant was required to expend a significant amount of time reviewing the legal issues presented and potential ramifications arising out of the Debtors' acquisition of the Bradlees business in July 1992. The Committee, consisting of creditors of Parent and Stores, was committed to resolving the issues surrounding the Intercompany Claim created by the acquisition in the context of a consensual plan of reorganization.

55. In July 1992, Parent consummated a public offering of its common stock and purchased the Bradlees' business from The Stop and Shop Companies, Inc. (the "IPO Transaction"). In connection with the spin off, an intercompany receivable from Stores to Parent was created in the approximate amount of \$280 million to reflect certain acquisition and operating obligations of Stores to Parent (the "Intercompany Claim").

56. Applicant worked extensively to consensually resolve the issues raised by the Intercompany Claim without

litigation. The Committee believed that such litigation would only distract the Debtors' reorganization efforts and further delay the Debtors' emergence from chapter 11. The Unofficial Committee unilaterally pressed throughout these cases for a full investigation of the Intercompany Claim by the Committee, the formation of separate creditors' committees for Parent and Stores, and the appointment of examiner to commence litigation with respect to the Intercompany Claim.

57. After the Debtors published a consolidating balance sheet in October 1995, which set forth the Intercompany Claim, Applicant communicated extensively with the Debtors to encourage the Debtors to file a Form 8k in order to supplement the publicly available information concerning the Intercompany Claim. Applicant and the Committee financial advisors also undertook a preliminary review of the issues related to the Intercompany Claims at the Committee's request.

58. In February 1996, in accordance with the Committee's request, the Debtors filed a Form 8K which contained additional information about the nature of the Intercompany Claim. Applicant also assisted the Committee in reviewing whether separate creditors' committees for Parent and Stores were appropriate and the Committee concluded that the consolidated Committee was in fact appropriate.

59. Applicant also conferred with counsel for the Unofficial Committee to reiterate the Committee's position that in order to conserve the resources of the estates and eliminate duplicative efforts of the various professionals, the Debtors in the first instance should extensively evaluate potential causes of action relating to the Intercompany Claim and the IPO Transaction and thereafter the Committee would review the Debtors analysis and draw its own conclusion on behalf of unsecured creditors.

60. On September 13, 1996, the Debtors' professionals distributed their comprehensive (in excess of 150 pages) analysis of the Intercompany Claim and any claims related to the IPO Transaction, the Confidential Analysis of Potential Claims Arising Out of the July 2, 1992 Initial Public Offering of Bradlees, Inc. and the Subsequent Acquisition of Bradlees (the "Report"). Applicant conferred with the Debtors' professionals and the Committee financial advisors on numerous occasions to discuss the Report, its assumptions and the overall impact of this analysis on plan alternatives.

61. At the Committee's request, Applicant reviewed and reported to the Committee regarding: the structure of the leveraged buyout; the documents relating the initial public

offering; the Indenture dated August 1, 1992 entered into by State Street Bank and Trust Company, as trustee, with respect to the 11% Subordinated Bradlees Debentures due 2002; and the Indenture dated March 1, 1993 entered into by Fleet Bank of Massachusetts, N.A., as trustee, with respect to the 9 1/4% Senior Subordinated Debentures due 2002 and the numerous potential claims and theories outlined in the Report.

62. During early 1997, in order to further the Committee's goal of preventing litigation with respect to the Intercompany Claim and promoting the likelihood that these issues would be consensually resolved in a plan of reorganization, Applicant proposed that the Debtors toll the statute of limitations with respect to claims related to the Intercompany Claim. Unless tolled, such statute of limitations would have expired on June 23, 1997.

63. Applicant communicated extensively with the parties in interest concerning the tolling of these actions. The Unofficial Committee was not satisfied with the efforts to toll the statute of limitations, and in May 1997 (within weeks of the expiration of the statute of limitations) sought to have an examiner appointed to commence litigation with respect to the Intercompany Claim and the conduct an investigation. By memorandum decision and order dated June 4, 1997, the Bankruptcy

Court denied the Unofficial Committee's request noting that the status quo with respect to these actions was preserved by the stipulation entered into by the Debtors dated June 23, 1997 which tolled the statute of limitations for these actions. (The Unofficial Committee filed an appeal with respect to this Order but adjourned the appeal ad infinitum, choosing instead to continue to negotiate a consensual plan to settle these issues.)

64. Ultimately, all issues related to the compromise of the Intercompany Claim were resolved by the terms of the Second Amended Plan.

(d) **Alternative Dispute Resolution Program.**

65. During the first year of these cases many of the tort claimants involved in these cases filed motions for relief from the automatic stay and/or for permission to permit the continuation of actions or for permission to file suit in other jurisdictions. To address this confusion and to foster the Debtors' ability to focus on their reorganization efforts, the Committee requested that Applicant repeatedly urge the Debtors to promptly implement an alternative dispute resolution program in order to timely and efficiently resolve these claims without significantly burdening Debtors' management. Applicant provided the Debtors with recommendations and examples of important features for such a program.

66. Applicant reviewed drafts of the Debtors' proposed ADR procedures and provided comments to the Debtors' counsel, including numerous suggestions to improve the ADR procedures proposed by the Debtors from the standpoint of unsecured creditors.

67. By Order dated September 12, 1996, the Debtors were authorized to implement an ADR Program for personal injury and other tort claims and enjoined the commencement of tort actions except pursuant to such program. Over the course of the next two and half years of these cases, the Debtors were able to settle or liquidate hundreds of personal injury claims prior to the Effective Date using the ADR Program.

(e) **Vendor Programs.**

68. The Committee's commitment to timely claims reconciliation is also evident from the Committee's instruction to Applicant to promote resolutions of other types of claims as well. The Committee believed that the Debtors' relationships with the trade vendor community were critical to the Debtors' survival and Applicant dedicated significant resources to fostering these relationships.

(i) RTV Program

69. Upon Applicant's retention, the Committee directed Applicant to request that the Debtors' promptly file a motion for approval of a return to vendor program (an "RTV Program"). In the ordinary course of the Debtor's business prior to the commencement of these Chapter 11 cases, vendors accepted returns for the following types of merchandise: (a) goods that were no longer appropriate to the current selling season, (b) goods that were appropriate to the current selling season but were returned as part of an effort to have a balanced mix of different sizes and colors, (c) goods that were slow to sell, (d) damaged or defective goods, (e) goods sold under agreements whereby the vendor agreed to take back unsold merchandise, and (f) goods that did not correspond to the Debtors' purchase orders (collectively, "RTV Goods"). Prior to the bankruptcy filings, when the RTV Goods were returned, the vendors gave the Debtors dollar for dollar credit for the cost of these goods.

70. Upon the commencement of these cases, the Debtors suspended regular merchandise return programs with respect to goods that had been delivered prior to the Petition Date. Vendors previously operating under customary return to vendor programs were unwilling to accept returns of pre-petition goods for credit against post-petition invoices. Applicant

immediately commenced discussion and negotiated with the Debtors and other parties in interest to initiate an RTV Program whereby the Debtors would be authorized to return pre-petition goods to vendors for credit against pre-petition invoices.

71. Applicant's efforts resulted in the entry of an order, dated August 2, 1995 ("RTV Order"), and later amended August 22, 1995, approving the Debtors' proposed RTV Program. The RTV Order provided, among other things, that any RTV Goods returned to a vendor will be applied against pre-petition account balance dollar for dollar, based upon the invoice cost of the returned merchandise. To the extent that vendor does not hold a pre-petition claim against the Debtors, any offset for return of the RTV Goods shall be applied against post-petition invoices dollar for dollar, based upon the invoice cost of the returned merchandise.

(ii) Reclamation Program

72. The Committee also directed Applicant to work with the Debtors to implement a reclamation program. Applicant pressed the Debtors to seek approval of a reclamation program which provided for payment options for creditors as follows: (i) a \$.65 on the dollar immediate payment in cash for the amount of the allowed reclamation claim with a waiver of the balance of

the claim, or (ii) an administrative claim for the allowed amount of the reclamation claim.

73. On May 1, 1996, the Debtors filed a motion to seek approval of a reclamation program which included the above described payment options. However, the motion did not include any procedures to resolve the \$14.3 million in reclamation claims which the Debtors originally stated were in dispute (out of a total of \$27.4 million of reclamation claims).

74. The Committee reviewed the Reclamation Motion and raised concerns regarding certain of the lack of reconciliation procedures. The Committee instructed Applicant to object to the Reclamation Motion, unless the Debtors also agreed to include procedures to timely resolve disputed reclamation claims. The Committee was concerned that, among other things, without a formal reconciliation process or ADR Program, the disputed claims could be left unreconciled until confirmation. The Committee believed that implementation of formal ADR Program would not only discourage the filing of reclamation adversary proceedings and result in the prompt resolution of claims.

75. Applicant communicated the Committee's concerns to the Debtors' counsel, but the Debtors refused to make any modification to the Reclamation Program and, therefore,

Applicant prepared an Objection to the motion. In response to the Committee's Objection and the Objections filed by five (5) reclamation creditors, the Debtors filed a Response wherein they agreed to make certain modifications to the reclamation procedures. The Debtors' Response also stated that they would make a determination as to participation in an ADR Program on a case-by-case basis. The Committee determined that the proposed modifications did not adequately address its concern about the failure of the program to implement procedures to allow creditors to timely resolve disputed claims.

76. At the May 15, 1996 hearing on the Reclamation Motion, the Court did not grant the motion but adjourned the hearing to provide the Debtors additional time to resolve disputed reclamation claims. Finally, in October 1996, the Debtor proposed revised reclamation procedures which included many of the features previously requested by the Committee. The new procedures permitted the Debtors to settle reclamation claims within certain parameters on notice to the Committee and the Senior Bank Agent and included formal procedures for the reconciliation of reclamation claims. These procedures also contained an alternative dispute resolution option for the settlement of disputed reclamation claims. The new program was approved on November 12, 1996.

77. Within a month of implementation of the reclamation procedures over a quarter of the reclamation claims were reconciled and settled. Ultimately, prior to the Effective Date, approximately 200 of the disputed reclamation claims asserted against these estates were compromised without litigation or significant administrative cost to the estates.

IV. CONCLUSION

78. Applicant respectfully requests a final fee award for professional services rendered during the Last Fee Period in the aggregate amount of \$155,222.50. In compliance with the Administrative Orders, Applicant has also necessarily incurred disbursements in the amount of \$155,222.50 in the performance of Applicant's duties to the Committee during the Last Fee Period. Applicant respectfully requests the reimbursement of disbursements during the Last Fee Period in the amount of \$15,856.13.⁴

79. Applicant has necessarily and properly expended 332.1 hours of services in performance of its duties as counsel to the Committee during the Stub Period. Applicant respectfully

⁴ Applicant will submit a final calculation of fees and expenses for the Last Fee Period at the final fee hearing.

requests a final fee award for professional services rendered during the Stub Period in the aggregate amount of \$84,381.00.

80. During the three and one-half year duration of these cases, Applicant has necessarily and properly expended the hours of professional services as set forth herein and in the twelve prior interim fee applications. Applicant seeks "final" allowance of each of the prior interim awards of fees and disbursements aggregating \$4,936,132.00 for fees and \$419,608.22 for disbursements, granted to Applicant pursuant to prior interim fee orders of this Court.

81. As stated in the Affidavit of Glenn B. Rice, annexed hereto as Exhibit "G", Applicant has not agreed to share any compensation to be received herein with any other person.

82. This is Applicant's final request for an award of interim compensation in these cases. Except as set forth herein, no previous application has been made to this or any other Court for the relief requested herein.

WHEREFORE, Applicant respectfully requests a final award of compensation for professional services rendered as counsel to the Committee: during the Last Interim Period, the professional fees in the amount of \$155,222.50 together with

reimbursement of disbursements in the amount of \$15,856.13; during the Stub Period, professional fees in the amount of \$84,381.00; and for the entire period of these cases, professional fees in the amount of \$4,936,132.00 together with reimbursement of disbursements in the amount of \$419,608.22; for such other and further relief as this Court deems just and proper.

Dated: New York, New York
March 19, 1999

OTTERBOURG, STEINDLER, HOUSTON
& ROSEN, P.C.
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By: _____ / s /
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