FORM B10 (Official Form 10) (4/98) USBC, Illinois Northern (4/1/98)

*FILE ORIGINAL FOR CHAPTERS 7 and 11, IN DUPLICATE FOR CHAPTER 13, FOR DATE-STAMPED COPY, SEE #9 BELOW

United States Bankruptcy Court
Northern District of Illinois, Eastern **Division**

☐ CH 7 ☐ CH 13 ☒ CH 11
PLEASE CHECK CHAPTER

Name of Debtor: KMART CORPORATION

Case Number: 02B02474

PROOF OF CLAIM

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S. C. § 503

File Claim Form With:

United States Bankruptcy Court
P. O. Box A3613
Chicago, Illinois 60690-3612

Creditor # _____

THIS SPACE IS FOR **COURT USE ONLY**

Name of Creditor (The person or other entity to whom the debtor owes money or property)
MIKE ZOELLER, A MINOR

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and Address Where Notices Should be Sent
c/o Paul Vahldiek
Vahldiek & Cano, PLLC
1221 McKinney, Suite 3850, Houston, Texas 77010

Telephone No. 713-650-3200

☒ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

Account or other number by which creditor identifies debtor:

Check here if this claim
☐ amends ☐ replaces a previously filed claim dated: _____

1. BASIS FOR CLAIM

☐ Goods sold
☐ Money loaned
☐ Taxes
☐ Retiree benefits as defined in 11 U.S. C. § 1114 (a)
☐ Services performed
☒ Personal injury/wrongful death
☐ Other _____
☐ Wages, salaries, and compensation (Fill out below)
Your social security number _____
Unpaid compensation for services performed
from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED:

3. IF COURT JUDGMENT, DATE OBTAINED:

4. Total Amount of Claim at Time Case Filed: $ 20,000,000.00

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured claim

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

☐ Real Estate
☐ Motor Vehicle
☐ Other _____

Value of collateral: $_____

Amount of arrearage and other charges at time case filed included in secured claim above, if any: $ _____

6. Unsecured Priority Claim

☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $ _____
Specify the priority of the claim:

☐ Wages, salaries, or commissions (up to $4,300), *earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier-11 U.S.C. § 507(a)(3)
☐ Contributions to an employee benefit plan-11 U.S.C. § 507(a)(4)
☐ Up to $1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child -11 U.S.C. § 507(a)(7)
☐ Taxes or penalties owed to governmental units11 U.S.C. § 507(a)(8)
☐ Other—Specify applicable paragraph of 11 U.S.C. § 507(a)_____

**Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. SUPPORTING DOCUMENTS: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. ANY ATTACHMENT MUST BE 8-1/2" BY 11"

9. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and an additional copy of this proof of claim.

THIS SPACE IS FOR **COURT USE ONLY**

3/11/02
535 80

Date: 3/5/02

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)
Daniel Palinski Jr ATTORNEY FOR CREDITOR

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and3571.

December 13, 2001

Kmart Corporation
Resource Center
3100 West Big Beaver Road
Troy MI 48084-3163
Fax 248 463 5595
cgullen@kmart.com

Christopher R. Gullen 248 463 1621
Director, Public Liability &
Risk Management

André F. Mayes 248 637 4429
Michael D. Cavanagh 248 463 5794
Kevin F. Robbins 248 463 1612
Deborah M. Walker 248 463 5688
Public Liability Attorneys

Lori L. Herron 248 463 5019
Manager of Customer Claims

Paul R. Vahldiek, Jr.
Vahldiek & Cano, P.L.L.C.
3850 Houston Center
1221 McKinney
Houston, TX 77010-2028

RE: Zoeller V. Kmart
D/O/L: 08/17/1997
KMART STORE: 7615

Dear Mr. Vahldiek:

I have conducted an extensive review of this matter and am prepared to make the following offers:

1. Claims of Dina Zoeller - $35,000
2. Claims of Charles Zoeller - $10,000
3. Claims of Minor Mike Wilson Zoeller - $100,000 plus the following:

   Annuity Certain continuing for 13 years, providing $400 per month level income

   Life Annuity with 30 years payments guaranteed in the event of premature death providing $400 per month, increasing by 3.0% compounding annually, first payment commencing 8/15/2015

   Lump Sum Payments for Michael
   $15,000 on 8/15/2015
   $15,000 on 8/15/2018
   $25,000 on 8/15/2022
   $95,000 on 8/15/2027

I have attached a copy of Dr. Lehane's report which is self-explanatory and clearly establishes his significant background as an Oncologist together with his first hand knowledge of both the administration of the drug Methotrexate and its side effects.

Due to fluctuations in the interest market, I must advise that this offer to settle expires on 12/19/2001.

Sincerely,

Lori L. Herron
Manager, Risk Administration
Kmart Corporation

Enclosure

VAHLDIEK, CANO, GRAYSON, HOVENKAMP & PETROSKI
An Association Of Professional Limited Liability Companies
3850 One Houston Center
1221 McKinney
Houston, Texas 77010

Paul R. Vahldiek, Jr.

(713) 650-3200
Fax (713) 650-0251
paul.vahldiek@vcghp.com (E-mail)

July 22, 1999

K-Mart Pharmacy #7615
229 FM 1382
Cedar Hill, TX 75104

VIA FAX(972)293-7485
AND CM/RRR Z 386 771 517

Re: My Clients: 4590i Notice for Claimants Charles and Dina Zoeller, individually ans as next friend and parent and guardian of Mike Wilson Zoeller
Incident Date: August 17, 1997 and August 25, 1997

Dear Sir or Madam:

The claims arise from incidents which occurred on August 17, 1997 and August 25, 1997. My client, Dina Zoeller received a misfilled prescription from your store on both previously mentioned dates. Mrs. Zoeller was released from the St. Paul Medical Center on August 17, 1997 after giving birth to her premature son, Mike Wilson Zoeller. Dr. Lamar Robinson sent Mrs. Zoeller home for bed rest with a prescription to stop the excessive bleeding. The Zoellers would only later learn that the prescription was for Methergine, not Methotrexate. She had been experiencing bleeding since giving birth to Mike on August 15, 1997. Charles Zoeller, Dina's husband, took his wife home to rest, then went to K-Mart Pharmacy #7615 located at 229 FM 1382, Cedar Hill, Texas 75104 and dropped off the prescription written by Dr. Robinson. While the prescription was supposedly being filled, Charles proceeded to another store to purchase flowers and a card for his wife. He then went back to K-Mart to pick up the prescription. Charles Zoeller received and purchased a prescription wrongfully filled with Methotrexate. This drug was dispensed by K-Mart Pharmacist Ronald R. Woody. Charles went home immediately to administer the dose to his ailing wife. Dr. Robinson had given strict instructions that she was to take all the medication as instructed. The bottle contained 30 pills, although the prescription was written for 15 pills

On August 19, 1997, Dina Zoeller began to experience nausea, vomiting and burning sensations while urinating. Dina's vaginal bleeding continued and had actually become worse.

On August 21, 1997, Dina called Dr. Robinson regarding her symptoms. Dr. Robinson, believing that Mrs. Zoeller was taking Methergine, as prescribed, told Dina to double up on her medication and see how she felt over the next few days. Dina followed Dr. Robinson's instructions but continued to experience the same symptoms and, in fact, developed new symptoms such as;

depression, sores in her mouth and rectal bleeding. During this time, Dina continued to try to be involved in nursing and caring for their newborn son, Mike Wilson Zoeller. She would pump her breast milk and deliver it to the hospital for Mike to feed from. For the first two weeks of his fragile premature life, Mike is feeding off of the toxic breast milk.

By August 25, 1997, Dina had just about taken all of the wrongfully filled prescription. The prescription was refilled at the same K-Mart Pharmacy by Ronald R. Woody who once again filled it with Methotrexate. Dina read the prescription note and observed a warning regarding breast feeding while on the medication. Being so ill and concerned, she decided to take the prescription note to the hospital that day and query a staff member or doctor about it. This caused her grave concerns and when she arrived at the hospital, she showed the note to one of the NICU nurses. The nurse was alarmed and told her that the medication she was taking is for cancer patients. Dr. Lamar Robinson was immediately notified. This was the first time that the Zoellers or Dr. Robinson became informed that Dina and the premature infant, Mike, were both taking Methotrexate. Dr. Robinson instructed Dina to immediately discontinue taking the medication. Dina's bleeding eventually ceased, the mouth sores diminished and her depression symptoms were less intense.

Dr. Robinson called the K-Mart pharmacy #7615 and asked them to fax him a copy of the prescription. Dr. Robinson wrote another prescription for Methergine for Dina which was filled at an Eckerd pharmacy. Please find enclosed a copy of the K-Mart receipt print-out, prescription note of warnings and the actual prescription written out by Dr. Robinson evidencing Dr. Robinson's correct prescription and K-Mart's negligence.

Mike Wilson Zoeller continued to be hospitalized until October 2, 1997. He had continuous problems with brachiacardia and apnea. He was born at 31 weeks. The Methotrexate he received in the breast milk injured and exacerbated his already precarious young life. At approximately 10 months of age, Mike Wilson Zoeller was trying to stand/walk and Dina heard a "snap". Immediately Mike began to scream. He was taken to Children's Medical Center where it was discovered that Mike had suffered a longitudinal femur split break to the right leg. The toxic effects of Methotrexate are bone marrow suppression and mucosal ulceration. Mike Zoeller was also referred to the Richardson Development Center for Children by his pediatrician, Dr. Thomas Deacon, due to developmental concerns. He had questionable performance on vision screening tests and had a two month adjusted age result on his ECI evaluation. He is currently receiving occupational therapy along with special instructions to his parents once a month on how to help his developmental skills at home. He sees his pediatrician Dr. Deacon twice a year for office visits and wears an apnea monitor nightly.

Prior to the delivery of this baby, Dina Zoeller had given birth to two healthy, normal children. Charles and Dina Zoeller do not have a history of developmentally challenged children. This negligence and chain of events has put a great financial strain on the Zoeller family. Charles and Dina Zoeller had a family business, named Charles' Wrecker Service, Inc. which does not have health insurance. Dina had been drawing a salary until the birth of their son. They have lost the business and are near filing bankruptcy.

Pursuant to §4590i. of the Medical Liability and Insurance Improvement Act of Texas, also known as the Malpractice Act, you are hereby given notice of a claim by Charles and Dina Zoeller, individually and as next friend and parent and guardian of Mike Wilson Zoeller against you for improper, insufficient and negligent healthcare.

We are prepared to file suit in this tragic and newsworthy matter. However, we will give you the opportunity to promptly initiate a dialogue to promptly resolve the claims before the Statute of Limitations runs which would be 75 days from the date you received notice.

Very truly yours,

Vahldiek, Cano, Grayson, Hovenkamp & Petroski

By: _____
Paul R. Vahldiek, Jr.

PRV/tf
Enc.

TAX RECEIPT

KMART PHARMACY #7615
229 FM 1382
CEDAR HILL TX 75104
(972)291-0087

Rx#6725835 Tx#1267098 Pharmacist: RRW
ZOELLER, DINA
1011 BROOKSIDE
CEDAR HILL TX 75104
Ph:(214)291-3948
METHOTREXATE 2.5MG TAB NDC:00555-0572-02

Dr. ST PAUL HOSP.,

08/17/97 QTY: 15 CASH PRICE: $27.19

DUP. RECEIPT

KMART PHARMACY #7615
229 FM 1382
CEDAR HILL TX 75104
(972)291-0087

Rx#6725835 Tx#1267098 Pharmacist: RRW
ZOELLER, DINA
1011 BROOKSIDE
CEDAR HILL TX 75104
Ph:(214)291-3948
METHOTREXATE 2.5MG TAB NDC:00555-0572-02

Dr. ST PAUL HOSP.,

08/17/97 QTY: 15 CASH PRICE: $27.19

TAX RECEIPT

KMART PHARMACY #7615
229 FM 1382
CEDAR HILL TX 75104
(972)291-0087

Rx#6725835 Tx#1268018 Pharmacist: RRW
ZOELLER, DINA
1011 BROOKSIDE
CEDAR HILL TX 75104
Ph:(214)291-3948
METHOTREXATE 2.5MG TAB NDC:00555-0572-02

Dr. ST PAUL HOSP.,

08/25/97 QTY: 15 CASH PRICE: $27.19

DUP. RECEI

KMART PHARMACY #7615
229 FM 1382
CEDAR HILL TX 75104
(972)291-001

Rx#6725835 Tx#1268018 Pharmacist: RR
ZOELLER, DINA
1011 BROOKSIDE
CEDAR HILL TX 75104
Ph:(214)291-394
METHOTREXATE 2.5MG TAB NDC:00555-0572-

Dr. ST PAUL HOSP.,

08/25/97 QTY: 15 CASH PRICE: $27.1

Pharmacist's Name: RONALD R WOODY
Pharmacy Phone: (972) 291-0087
This drug expires on: 08/25/98

SPECIAL INSTRUCTIONS:
Drink plenty of fluids whil on this medication
Consult Dr before aspirin uprofen/naproxen use.
Check w/Dr before drink ing alcoholic beverages
May cause dizziness
Avoid prolonged exposure to sun.Use sunscreen
Do not use if pregnant or while breast-feeding.

DRUG NAME: METHOTREXATE 2.5MG TAB BARR

GENERIC NAME: METHOTREXATE (meth-o-TREX-ate)

COMMON USES: This medicine is an antimetabolite agent used to treat rheumatoid arthritis, psoriasis, and certain types of cancers. It may also be used to treat other conditions as determined by your doctor.

HOW TO USE THIS MEDICINE: Follow the directions for using this medicine provided by your doctor. Ask your doctor, nurse, or pharmacist any questions you have about this medicine. DRINK EXTRA FLUIDS as directed by your doctor. IF NAUSEA, VOMITING, OR LOSS OF APPETITE OCCUR, ask your doctor, nurse, or pharmacist for ways to lessen these effects. STORE THIS MEDICINE at room temperature in a tightly-closed container, away from heat and light. IF YOU MISS A DOSE OF THIS MEDICINE, take it as soon as possible. If it is almost time for your next dose, skip the missed dose and go back to your regular dosing schedule. Do not take 2 doses at once.

CAUTIONS: KEEP ALL DOCTOR AND LABORATORY APPOINTMENTS while you are being treated with this medicine. BEFORE YOU BEGIN TAKING ANY NEW MEDICINE, either prescription or over-the-counter, check with your doctor or pharmacist. This includes any medicines which contain ibuprofen, naproxen, aspirin, salicylates, or any other medicine used to treat pain, fever, swelling, or arthritis. DO NOT DRINK ALCOHOL while you are taking this medicine. THIS MEDICINE MAY CAUSE increased sensitivity to the sun. Avoid exposure to the sun or sunlamps until you know how you react to this medicine. Use a sunscreen or protective clothing if you must be outside for a prolonged period. THIS MEDICINE MAY LOWER YOUR RESISTANCE to infection. To prevent infection, avoid contact with people who have colds or other infections. Do not touch your eyes or the inside of your nose unless you have thoroughly washed your hands first. THIS MEDICINE MAY REDUCE THE NUMBER OF BLOOD CELLS WHICH ARE NEEDED FOR CLOTTING. To prevent bleeding, avoid situations where bruising or injury may occur. DO NOT USE THIS MEDICINE if you are pregnant. IF YOU SUSPECT THAT YOU COULD BE PREGNANT contact your doctor immediately. IF YOU ARE OR WILL BE BREAST-FEEDING while you are using this medicine, check with your doctor or pharmacist to discuss the risks to your baby.

POSSIBLE SIDE EFFECTS: SIDE EFFECTS, that may go away during treatment, include nausea, loss of appetite, changes in menstrual periods, or hair loss. If they continue or are bothersome, check with your doctor. CHECK WITH YOUR DOCTOR AS SOON AS POSSIBLE if you experience decreased urination or dark urine; dry, unproductive cough, shortness of breath, or other breathing problems; unusual bruising or bleeding; sores on the mouth or lips; skin rash; vomiting; diarrhea; abdominal pain; black tarry stools; yellowing of skin or eyes; swelling of feet or legs; joint pain; fever or chills; sore throat; or cough with congestion. If you notice other effects not listed above, contact your doctor, nurse, or pharmacist. Some side effects may occur after you stop treatment with this medicine. If this happens, be sure to contact your doctor.

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Copy of original Rx faxed from pharmacy @ ~1620 8/25/97

Dina Zoellner

Name: Dina Zoellner

Address:

Age: ____ Date: 8/17/97

(Address required on all prescriptions)

ST PAUL
At Southwestern Medical Center

5909 Harry Hines Blvd.
Dallas, TX 75235
Main: (214) 879-1000
ER: 879-2800 - NO REFILLS
Clinic: 879-2888 (8a-4:30p)

℞ Methergine 0.2 (15)
+ po TID

Lanar

M.D. Robinson M.

Product Selection Permitted

Dispense as Written

104

Refill 1 Time(s)

MD Printed Name:

DEA #

MD Phone/Pager#:

#1961 12/95

08/25/1997 16:22 972-291-1810 J MASON PHARMACY DM PAGE 01

Stanley M. Warner, M.D.
150 Ocean Park Blvd. Unit 522
Santa Monica, Calif. 90405
Phone: (310) 396-6467

1/17/00

Paul R. Vahldiek Jr.,
Vahldiek,Cano, Grayson, Hovenkamp & Petroski
3850 One Houston Center
1221 McKinney
Houston, Texas 77010

Re: Dina and Mike Zoeller

Dear Mr. Vahldiek,

I have reviewed the material you sent me regarding Dina Zoeller. It is obvious that the prescriptions were for methergine 0.2mg and methotrexate 2.5mg. was dispensed. This is obviously below the standard of care. Mrs. Zoeller was breast feeding and methotrexate does pass in breast milk even though the concentration is low.

As far as the child is concerned there is a risk of Immune suppression and there is some data on this for Amethopterin which is a cytotoxic agent with only one carbon site differential from methotrexate. There is also risk of carcinogenesis with methotrexate. Its effect on growth is uknown but with exposure in utero there is severe growth retardation and fetal death so this also is a possibility. Methotrexate is a folic acid inhibitor and folic acid is involved in transfer of carbon atoms and of course this is action is essential to formation of nucleic acids.

As far as the mother is concerned the risk of carcinogenesis, immune suppression and renal or hepatic damage must be considered as they all can occur with methotrexate exposure. Of course during exposure such side effects as nausea vomiting etc. can occur as well.

Methotrexate mainly is excreted through the kidneys. Renal clearance rates of methotrexate vary greatly and are generally decreased at higher doses. Methotrexate toxicity has been stated to be more dependent upon duration of exposure to the drug than the peak level. There was prolonged duration in Dina Zoeller.

Please feel free to discuss the above with me.

Sincerely,

Stanley M. Warner, MD.

STANLEY M. WARNER, MD
1408 ARMACOST AVE, APT. 3
LOS ANGELES, CALIFORNIA, 90025
TELEPHONE: (310)-497-6288

11/11/2000

Paul R. Vahldiek Jr.
Vahldiek, Cano, Grayson, Hovenkamp & Petroski
3850 One Houston Center
1221 McKinney
Houston, Texas 77010

Re: Dina and Mike Zoeller

Dear Mr. Vahldiek,

I have reviewed the records of Children's Medical Center, Richardson Development Center, and Scottish Rite Hospital that you have sent me. I have reached further conclusions based on these records.

The records show that there was apnea and bradycardia until breast feeding was discontinued. The records also show that breast milk samples obtained when breast feeding was discontinued showed high levels of methotrexate and when breast feeding was resumed after 2 weeks apnea and bradycardia began again. In fact, the child was hospitalized with this recurrent episode of apnea and bradycardia and suffered a cardiac arrest with CPR on the day of discharge.

From the records the child most likely suffered from a hypoxic event which led to brain damage. Apnea, bradycardia and cardiac arrest all cause hypoxia. Methotrexate is essentially a metabolic poison and certainly appears related to all of the above. One other factor is that this was a 31 week gestation and premature infants' brains are more sensitive to hypoxia than term infants.

Sincerely yours,
Stanley M Warner MD
Stanley M. Warner MD.

Curriculum Vitae

Stanley M. Warner, Pharm.D., M.D., F.A.C.O.G.
700 East Ocean Blvd. #3102
Long Beach, California 90802
Telephone: (526)-437-3363

Place of birth: **Cleveland, Ohio**
Citizenship: **USA**

HOBBIES
Electronics and Computers

LANGUAGES
Spanish, Italian, German and English

EDUCATION
Undergraduate Chemistry Major Occidental College, Los Angeles, California, 1955-1957

Doctorate in Pharmacy, University of Southern California 1961.(Attended 1957-1961)

Doctorate in Medicine, University of Southern California, School of Medicine,1970 (Attended 1966-1970)

Externship Royal Northern and Royal Free Hospitals, London, England, 1969

POSTGRADUATE TRAINING
Internship at Los Angeles County/University of Southern California Medical Center, Los Angeles, California 1970-1971

Residency in Obstetrics and Gynecology at Cedars Sinai Medical Center, Los Angeles, California, 1971-1974

PHARMACY PRACTICE
Clinical Practice Of Hospital and Retail Pharmacy 1961-1966 (In and around Los Angeles, California.

PRACTICE OF MEDICINE
Private and Academic Practice of Ob/Gyn in Los Angeles and Santa Monica, California 1974-1984

Private and Academic Practice of Ob/Gyn in Mount Holly, New Jersey 1984-1986

Academic practice of Ob/Gyn for the University of Massachusetts School of Medicine Department of Family and Community Medicine, 1986-1991

Academic Practice of Ob/Gyn for Blackstone Valley Community Healthcare (a Public Health Section 330 non profit health center associated with Brown University School of Medicine Department of Family and Community Medicine) Pawtucket, Rhode Island 1991-1996

Chief Medical Officer, Arroyo Vista Family Health Center, Jan. 1997 to Oct. 2000.

Medical Director Memorial HealthCare IPA, Long Beach , Calif. Oct. 2000 to present

POST GRADUATE HONORS AND AWARDS

Professor of the year, 1977 UCLA for my teaching as head of the Obstetrical and Gynecological section Of the Family Practice Residency Program at Santa Monica Hospital Medical Center

Professor of the year, 1986 and 1987,for my teaching as Director of Obstetrics and Gynecology for the Department of Family and Community Medicine, University of Massachusetts School of Medicine.

PROFESSIONAL LICENSES AND CERTIFICATION

Current Medical License in California

Board Certified in Obstetrics and Gynecology, 1976 to present

ACADEMIC APPOINTMENTS

Director of Obstetrics and Gynecology section of the Family Practice Residency at Santa Monica Hospital Medical Center(a UCLA Medical School program), Santa Monica, California 1974 to 1984

Clinical Instructor of Obstetrics and Gynecology (a UCLA Medical School Appointment) at Cedars Sinai Medical Center, Los Angeles, California, 1977 to 1981

Assistant Clinical Professor of Obstetrics and Gynecology, University of California, Los Angeles School of Medicine, 1981 to 1984

Assistant Clinical Professor of Obstetrics and Gynecology, Cooper Hospital University Medical Center, (New Jersey School of Medicine and Dentistry) Camden, New Jersey, 1984-1986

Associate Professor of Obstetrics and Gynecology, University of Massachusetts School of Medicine, January 1986 to September 1991

Associate Professor of Family and Community Medicine, University of Massachusetts School of Medicine, January 1986 to September 1991

Director of Obstetrics and Gynecology, Department of Family and Community Medicine, University of Massachusetts School of Medicine 1986-1991

Adjunct Associate Professor of Family Medicine , Brown University School of Medicine , 1988-1991

Clinical Professor of Family Medicine, Brown University Division of Biology and Medicine,1991-1996

HOSPITAL APPOINTMENTS

Infectious Disease Committee, Cedars Sinai Medical Center, Los Angeles, California, 1976

Ob/Gyn Committee Member, Cedars Sinai Medical Center, Los Angeles, California, 1976-1978

Surgical Suite Committee, Santa Monica Hospital Medical Center, Santa Monica, California, 1977

Ob/Gyn Committee Member, Santa Monica Hospital Medical Center,Santa Monica, California, 1978- 1984

Executive Medical Board, Santa Monica Hospital Medical Center, Santa Monica, California 1983-1984

Chief, Department of Obstetrics and Gynecology, Santa Monica Hospital Medical Center, Santa Monica, California, 1983-1984

Computer Planning Executive Committee member, Santa Monica, California, Santa Monica, California 1983-1986

Director, Department of Obstetrics and Gynecology, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986

Medical Executive Committee, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986.

DRG Committee, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986

Joint Conference Committee, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986

Ob/Gyn Mix Committee, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986

Medical Education Committee, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986

Surgical Services Committee, Memorial Hospital of Burlington County, Mount Holly, New Jersey, 1984-1986

Executive Medical Board Member, Southern New Jersey Perinatal Cooperative, 1984-1986

Director Obstetrics and Gynecology Clinics, Lowell General Hospital, Lowell, Massachusetts, January 1986 to September 1991.

Perinatal Committee, Lowell General Hospital, Lowell, Massachusetts, 1986-1991

Director Maternal Child Health Fellowship, Lowell General Hospital, Lowell Massachusetts, 1986-1991

Medical Education and Library Committee, Lowell General Hospital, Lowell, Massachusetts, 1991

Quality Assurance and Improvement Committee, Memorial Hospital of Rhode Island, 1992-1994

Cesarean Committee, Memorial Hospital of Rhode Island, 1992-1995

Co-director Maternal Child Health Fellowship, Memorial Hospital of Rhode Island, 1991-1996

BUSINESS EXPERIENCE

Founder and Board Member of the First Professional Bank, Santa Monica, California, founded in 1982

Loan Committee and Reimbursement Committee member of the First Professional Bank, Santa Monica, California, 1982-1984

Developer and Senior Partner of the Tenth Street Medical Building, Santa Monica, California, 1982

COMMUNITY EXPERIENCE

Founder of the Rape Crisis Intervention Center, Santa Monica Hospital Medical Center Santa Monica, California

Chairman, Data Base Committee, Southern New Jersey Perinatal Cooperative, 1984-1986

Member Massachusetts HPAC March of Dimes Grant Review, 1987-1992

Member of the Commonwealth of Massachusetts Statewide Task Force on Prevention of Low Birth-weight and Infant Mortality. 1989-1991 (Appointed by the Governor)

Board of Directors, Massachusetts Perinatal Association, Commonwealth of Massachusetts, 1990-1992

Editorial Review Board Member, "The Journal of Family Practice", 1990-1997

Member CDC Health Promotion/Disease Prevention Advisory Group for older adults March 2000 to present.

MEMBERSHIPS

Fellow American College of Obstetrics and Gynecology 1976 to present.

Fellow of the Los Angeles County Obstetrical and Gynecologic Society 1977 to present

Fellow, American Fertility Society, 1970 to present

Member, the Society of Teachers of Family Medicine, 1989 to 1997

PRESENTATIONS

Monthly seminars in Obstetrics and Gynecology at Cedars Sinai Medical Center, Los Angeles, California from 1974 to 1977 Topics were Current Controversies in Ob/Gyn

Various Grand Rounds from 1974 through 1986 at Cedars Sinai Medical Center, Santa Monica Hospital Medical Center, UCLA Medical Center and New Jersey School of Medicine and Dentistry including:

High Risk Pregnancy	Ectopic Pregnancy
Family Planning	Pelvic Inflammatory disease
Postpartum care	Sexual Assault and trauma
Antenatal Testing	Psychosocial Issues in Pregnancy

Intrauterine Growth Restriction
Postdatism
Infection during Pregnancy
Cesarean Section Assessment In the Postpartum Period

Adolescent Pregnancy
Normal Labor and Delivery
Monitoring and Anesthesia
Perinatal Regionalization

Grand Rounds University of Massachusetts School of Medicine, Antepartum Testing, 1986

Grand Rounds University of Massachusetts School of Medicine, Current Status of Birth Control, 1986

Grand Rounds University of Massachusetts School of Medicine, High Risk Pregnancy, 1986

Grand Rounds University of Massachusetts School of Medicine, Prevention of Premature Labor, 1986

Grand Rounds University of Massachusetts School of Medicine, Fetal Monitoring,1987

Society of Teachers of Family Medicine Seminar on How to Develop an Obstetrics Fellowship, 1987

Society of Teachers of Family Medicine Current status of Obstetrics in Family Medicine, 1987

Participation in Prevention of Preterm Labor Seminar, Medical School at the University of South Carolina, September 1987

District ACOG Continuing Education, Stonehill College, Prevention of Preterm Labor June 1988.

Risk Management program for the University of Massachusetts School of Medicine "How to prevent Malpractice Suits. Are there Solutions to the Malpractice Crisis?" November1988

Grand Rounds University of Massachusetts School of Medicine, Fetal Monitoring, January 1989

Grand Rounds University of Massachusetts School of Medicine, Induction and Augmentation of Labor, January 1989

Grand Rounds Brown University School of Medicine, Providence, Rhode Island, Prevention of Preterm Labor, February 1989

Massachusetts Academy of Family Practice Presentation: Induction of Cervical Cancer by Human Papilloma Virus, Cambridge, Massachusetts, May 4, 1990

Grand Rounds University of Massachusetts School of Medicine, Burbank Hospital, Fitchburg Massachusetts. Second Stage Labor Problems and Shoulder Dystocia, July 10,1990

ACOG Fall Education Meeting of the Massachusetts Perinatal Association. Presentation: Shortages and Uncertainty in the Critical Professions, Sturbridge, Massachusetts, October 1990

Grand Rounds Lowell General Hospital, Lowell, Massachusetts. Induction of cervical cancer by Human papilloma virus

Grand Rounds Brown university School of Medicine, Providence, Rhode Island, Prevention of Preterm Labor, August 1991

Grand Rounds Brown University, School of Medicine, Providence, Rhode Island, Induction of Cervical Cancer by human Papilloma Virus", December 1991

Grand Rounds Brown University School of Medicine, Providence, Rhode Island, Second Stage Labor Problems and Shoulder Dystocia, February 1992

Grand Rounds Brown University School of Medicine, Pawtucket Rhode Island, Colposcopy and Induction of Cervical Cancer by Human Papilloma Virus, July 1994

National Course in Advanced Life Saving in Obstetrics including Preterm Labor, Malpositions, Malpresentations, Neonatal Resuscitation and Fetal Monitoring Orono, Maine November 1993

National Course in Advanced Life Saving in Obstetrics including Preterm Labor, Malpositions, Malpresentations, Neonatal Resuscitation and Fetal Monitoring Newport, Rhode Island, May 1994

National Course in Advanced Life Saving in Obstetrics including Preterm Labor, Malpositions, Malpresentations, neonatal Resuscitation and Fetal Monitoring, Orono Maine, September 1994

Rhode Island Academy of Family Medicine Presentation, Colposcopy and Induction of Cervical Cancer by Human Papilloma Virus, May 1995

National Course in Advanced Life Saving in Obstetrics including Preterm Labor, malpositions, Malpresentations, neonatal Resuscitation and Fetal Monitoring, Memorial Hospital of Rhode Island, March 29,1996

American Academy of Family Practice National Review Course Presentation: Management of Labor, April 25 and 26, 1996

PUBLICATIONS

1. Research in Human Growth Hormone at the University of Southern California School of Medicine, 1966-1970 (Articles published in ACTA Endocrinologica, Vol. 67, pages 457-462, 1971, titled "The Early Antibody Response to Human Growth Hormone")
2. "The Menopausal Syndrome", Galen Associates, Third Century Press, Stanley M. Warner, M.D., 1988
3. "Oral" Contraceptives, Galen Associates, Third Century Press. Stanley M. Warner, MD, 1988
4. "Pregnancy Characteristics and Outcomes of Cambodian Refugees, Peter Gann M.D., Luan Nghiem, B.S. and Stanley M. Warner, M.D. American Journal of Public Health, September 1989, Vol.79,No.9
5. "How to Establish a Family Medicine OB/GYN Fellowship – Why is this Important?" Proceeds of Academic Symposium, Lake Placid, New York, in OB/GYN for the Family Physician, February 1990
6. Co-author of "Unfinished Business: Poverty, Race and Infant Survival in Massachusetts", The Commonwealth of Massachusetts Governor's Task Force on Infant Mortality, September 1990
7. Co-author of "Thalassemia and Southeast Asians in New England", A Region I Conference. Proceedings of the New England Thalassemia Program Conference on Thalassemia and Southeast Asians in New England. Published by the National Center for Education in Maternal and Child Health, Washington, D.C., March 1990
8. "Family Medicine Obstetrics",Brian Jack, M.D., Larry Culpepper, M.D., Ph.D., Martha Carlough, M.D., and Stanley M. Warner, M.D. Rhode Island Medical Society in the Rhode Island Medicine Section, June 1993, Vol.76 No.6 pages 285-289
9. Kenney Day Scientific Program: "Lowering Cesarean Section Rates: The Experience of a Community Teaching Hospital" Authors: Brian Jack, MD, Ronald Ricco, M.D., Larry Culpepper, M.D., M.P.H., Rick Long, M.D. and Stanley M. Warner, M.D., Pharm.D., Memorial Hospital of Rhode Island, Pawtucket, Rhode Island. February 10,1995

PAST RESEARCH WORK

1. Nicotine concentration in maternal and fetal cord blood at term. This project measured the concentration of nicotine derivatives in maternal blood at term in labor using gas chromatography and using the same method to measure the nicotine concentration in cord blood immediately postpartum to determine how much nicotine gets through to the fetus.
2. Antenatal care and fetal and maternal outcome of Cambodian immigrants and the health of the babies and mothers postpartum. Parameters included health care, hepatitis status, immunizations, baby's size, weight and the factors contributing including nutrition, and cultural attitudes. Also included were vaginal cultures and how this contributed to premature labor.
3. Prevention of Preterm labor project measuring uterine activity during physical work tasks as assessed by ambulatory uterine monitoring, March of Dimes Grant $25,000.00
4. Study of Thalassemias in Cambodian Immigrants. Including a new method of detecting Hemoglobins A2 and E by Polyacrylamide Gel Electrophoresis
5. Parasite Detection in Cambodian prenatal patients.
6. Diagnosis and transmission of Strongyloides infection in Southeast Asian Refugees to determine which subgroups of Cambodian refugees in Lowell , Massachusetts are at highest risk for Strongyloides infection to evaluate a new immunodiagnostic method of diagnosis and to determine if this intestinal parasite was being transmitted in Lowell.
7. Refugee Health Program-Bureau of Communicable Disease Control, Southeast Asian Birthing and Infancy (SABAI) Project. The overall goal of SABAI was to reduce barriers and increase access to prenatal, genetic and other maternal/infant health services and information among the city's Southeast Asian residents.
8. Uterine Activity during physical Work tasks assessed by ambulatory uterine monitoring. This study used ambulatory tocodynamometry to investigate whether or not specific work tasks performed during pregnancy are associated with increased frequencies of uterine contractions in women at low risk for preterm labor.
9. Treatment of Strongyloides with a new vermicide Ivermecton

GRANTS (either as primary or co-grantee)

1. NIH grant to study the concentration of nicotine in maternal and fetal blood, 1987
2. NIH grant to study Cambodian immigrants 1987
3. March of Dimes Grant to study preterm labor, $5,000.00, 1987
4. AHEC grant to study Thalassemia in Southeast Asians, 1989
5. Gateway city Grant State of Massachusetts Cambodian Outreach Program, $40,000.00, 1987 and 1988

6. Public Service Endowment Grant, University of Massachusetts, $2,280.00 to make videos relating to pregnancy, 1989
7. Southeast Asian Birthing and Infancy (SABAI) Project Grant $1,000,000.00 1989
8. March of dimes Grant to study uterine activity during physical work tasks As assessed by ambulatory uterine monitoring, $25,000.00, 1989
9. Merck & Co. Grant for treatment of Strongyloides infection with Ivermectin, 1990
10. March of Dimes Grant to study the separation of Hemoglobin A2 and Hemoglobin E by polyacrylamide gel electrophoresis, $2,068.00, December 1990.

FURTHER HEALTH CARE EXPERIENCE (OTHER THAN CLINICAL) AND TRAINING PROGRAM INVOLVEMENT.

1. As Chief of the Obstetrics and Gynecology section of the Family Practice Residency, Santa Monica Hospital Medical Center, from 1974 to 1984. This involved giving regular lecture series weekly and attending clinic twice a week at Santa Monica Hospital Medical Center for four hours each time. It also involved regular night call, back up and teaching of the clinical process of Obstetrics and Gynecology. I taught the Santa Monica Hospital Medical Center Family Practice Residents, medical students from UCLA and Ob/Gyn residents from Cedars Sinai Medical Center as well as providing access to health care to underserved, under insured and non insured patients.
2. UCLA Medical Center- As assistant clinical Professor of Obstetrics and Gynecology from 1981 to 1984 I regularly attended the clinic at UCLA Medical Center one to two months a year, four mornings each month. I also taught classes in Obstetrics and Gynecology to the medical students at UCLA as part of the core curriculum in Obstetrics and Gynecology.
3. New Jersey-from 1984 to 1986 as director of the Obstetrics and Gynecology section of the Family Practice Residency at Memorial Hospital of Burlington County I had the same duties as I had in Santa Monica. I also attended the Obstetrics and Gynecology Clinic at New Jersey School of Medicine and Dentistry, at Cooper Hospital Medical Center in Camden New Jersey. I taught regularly in the core curriculum of Obstetrics and Gynecology involving both the medical students and Family Practice residents. I also backed up the Family Practice residents at night and continued to provide access to health care for underserved patients.
4. From 1986 to 1991. I developed an Obstetrics and Gynecology program for the University of Massachusetts School of Medicine Department of Family and Community Medicine at Lowell General Hospital, Lowell, Massachusetts. I also developed the first Maternal Child Health fellowship in America at the same time. I both ran the program and taught the core curriculum twice a week as well as running the clinics and again providing access to Health Care to the underserved. My program netted the University $1,000,000.00 a year. I was also Director of Research Programs in Obstetrics and Gynecology at Lowell General

Hospital.

5. I was director of Ob/Gyn clinics, Blackstone Valley Community Health Center (a Public Health Section 330 non profit clinic) in Central Falls and Pawtucket Rhode Island from July 1991 to 1996. Here again I provided access to Health Care to underserved patients.

6 In July 1991 I brought the Maternal Child Health Fellowship I had developed to Brown University School of Medicine and enhanced it so that those physicians participating also received a Masters Degree in Public Health from Brown University. I was Co-director of this program from July 1991 to 1996.

7 As Chief Medical Officer of Arroyo Vista Family Health Center(another public health section 330 non profit clinic) from January 1997 to October 2000 I have performed the following functions: Credentialing, Utilization Review, Quality Improvement, Supervision of Medical Records, Director of Medicine , Recruitment of Physicians, Recruitment of referral specialists, Recruitment of Dentists, Supervision of Nursing, Director of the Referral Department, Supervision of Outreach, Medical Education, Immunization, and Tuberculosis Testing, Peer Review, Infection Control, Scheduling and orientation of all Medical Providers and Students, CHDP Certification, CPSP Certification, obtaining UPIN numbers, Supervision of Dentistry, Supervision of the X-Ray Department, liaison with the pharmacy, Supervision of the front office and reception functions, HPSA Designation and National Health Corp recruitment, Physician Education, Supervision of Laboratory Services, Assistance in selecting information systems and computers, obtaining contracts, managed care, Assistance in writing Grants, Assistance in 401 k selections and other financial functions, Networking including Minmet (Minority Medical Education and training),, writing Policies and Procedures, Taking and resolving Patient grievances, preparing for and participation in all managed care audits and JACHO accreditation. Health Fair participation, Strategic Planning, Annual evaluation and Personnel evaluations , and Fund raising

ATTORNEY FEE CONTRACT AND ASSIGNMENT OF INTEREST

(THIS AGREEMENT IS SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE TERMS BELOW.)

I. PARTIES

This agreement is between Vahldiek & Cano, P.L.L.C., 303 Jackson Hill, Suite 201, Houston, Texas 77007 (hereinafter referred to as "Attorney") and Charles Harold Zoeller, Jr. and Dina Zoeller, Individually and as Parents, Guardians and Next Friends of Their Minor Son, Mike Wilson Zoeller of 506 Goodwin, Richardson, Texas, telephone number (972) 644-4414 (hereinafter referred to as "Client", whether one or more)

II. STATEMENT AND SUBJECT OF RETAINER

Client hereby retains and employs Attorney to represent Client in prosecuting claims for personal injuries, property damages, and/or any other causes of action arising out of a series of events commencing on or about June 24, 1997, and involving a manhole cover located in or about Mesquite, Texas, and such further and additional events involving Client and K-Mart, St. Paul ~~Hospital~~ Medical Center, any and all physicians, nurses, hospitals, pharmaceutical companies, pharmacists, other health care providers and health insurers. Client empowers Attorney to compromise the claim and to file such legal action as may be advisable in the judgment of Attorney.

III. ATTORNEY'S FEES

Client agrees to grant, assign, sell and convey to Attorney as attorney's fees for such representation, 33-1/3 % if settlement is made before suit is filed thereon; 40% if collection or settlement is made after suit or an arbitration proceeding is filed, and 45% if an appeal occurs from any trial Court or arbitration panel decision (Attorney shall make the

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decision as to any appeal). The interests hereby assigned, sold and conveyed are based on gross settlement or judgment.

Further, Client and the Attorney agree that in the event that there is a settlement of the cause of action and that part of the settlement is in the form of a structured settlement (i.e., annuitized payments paid out over time), then Attorney will be entitled to the fees as set forth above, calculated in accordance with good and usual customary practices by contingency fee lawyers in calculating the present value of such structured settlement so as to reach a fair and equitable fee in accordance with the contingency fees set forth above.

IV. COSTS AND OTHER EXPENSES

All costs, necessary disbursements, and reasonable personal and travel expenses incurred by Attorney for and on behalf of the Client and the Client's claim or case, are to be paid by the Client. In the event that Attorney advances such costs, disbursements or expenses, Attorney shall be reimbursed from that portion of any recovery that is payable to the Client after calculation of Attorney's contingent fee hereunder. These costs, which are deducted from Client's share may include, but are not limited to, asset search charges, photography charges, copy charges, telephone charges, facsimile charges, medical records charges, medical narrative charges, postage and/or delivery charges, and other incidental file and office charges that may be incurred by Attorney in the handling of Client's claim or case. These costs may also include fees charged by expert witnesses, investigators, demonstrative evidence providers or other agents or subcontractors which

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may be advanced by Attorney and charged against any recovery on the claim as advanced costs.

V. LOANS

Attorney is under no obligation to advance Client any health care costs or monies against Client's claim or case. If, however, Attorney does advance Client any health care costs or monies with respect to Client's claim or case, Client understands and agrees that Client will repay the full amount advanced to Client by Attorney, together with simple interest thereon at the greater of either the rate of ten percent (10%) per annum or the interest amount payable by Attorney to Attorney's lender, if Attorney shall have borrowed funds which are advanced to Client by Attorney, subject to the limitation, however, that under no circumstances shall Client be required to pay Attorney as interest any amount in excess of that which is permitted by applicable law. The principal and interest, if any, due and payable by Client to Attorney under this paragraph is payable from Client's share of the proceeds of any settlement or recovery made on Client's behalf with respect to such claims.

VI. ATTORNEY'S LIEN

Attorney is given a lien on the claim or cause of action, on any sum recovered by way of settlement and on any judgment that may be recovered, for the sum and share mentioned above, as the Attorney's fee, and for any costs and expenses advanced by Attorney; and it is further agreed that Attorney shall have all general, possessory or retaining liens, and all special or charging liens known to the common law.

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VII. FEE TO CLIENT CONTINGENT ON RECOVERY

The parties expressly understand that in the event no recovery is obtained on the claim, the subject of this retainer agreement, the Attorney will make no charges for the time or services of Attorney, but it is expressly understood that Client shall remain responsible for any health care services, loans, costs and other expenses, as set forth in this agreement.

VIII. ASSOCIATE COUNSEL

It is agreed that Attorney may associate, or refer to for further handling, any additional counsel Attorney may solely determine to be appropriate without additional expense to Client. Client agrees to any division of the Attorney's fees set forth herein as Attorney deems appropriate.

IX. RETENTION OF ATTORNEY'S FEES AND ADVANCED COSTS FROM SETTLEMENT PROCEEDS

Attorney is authorized to receive the settlement or judgment amount, and retain the percentage of the Attorney's fee, and, before disbursing the remainder to the Client, Attorney will also deduct therefrom the amount of costs, disbursements and expenses advanced as herein provided, and may deduct therefrom any third party's rights and interests provided for by assignment, right of reimbursement, subrogation, letters of protection, or other binding agreements.

X. SUBSTITUTION OR DISCHARGE OF ATTORNEY

Attorney shall be entitled to the full contingent share of any settlement of or judgment on the claim for prosecution of which Attorney is hereby retained, notwithstanding

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that Client may discharge Attorney or obtain a substitution of Attorney before such settlement is made or judgment is had.

XI. WITHDRAWAL OF ATTORNEY

Attorney may withdraw from the Client's representation in the claim or case upon written notice to the Client. Written notice shall be deemed given when mailed to last known address of Client.

In the event of withdrawal from employment, Attorney will take all reasonable steps to avoid foreseeable prejudice to Client's rights, including giving due notice to allow Client time for employment of other counsel, with Court approval, providing all papers and property to which Client is entitled, and complying with applicable laws and rules governing such withdrawal from employment.

XII. NECESSITY FOR ATTORNEY'S CONSENT TO SETTLEMENT

Client will make no settlement of the claim herein, or accept any sum as reimbursement for any injuries or expenses, without the consent of Attorney. Additionally, Client agrees not to unreasonably withhold Client's agreement to accept a settlement, and it is expressly understood that Client's refusal to accept a fair and reasonable settlement offer is grounds for withdrawal of Attorney, and Attorney's interest shall be retained.

XIII. FAVORABLE OUTCOME NOT GUARANTEED

Client understands that Attorney has made no representations concerning the successful termination of the claim, or the favorable outcome of any legal action that may be filed, and has not guaranteed that Attorney will obtain reimbursement to Client of any of the costs, disbursements or expenses resulting from the accident out of which the claim

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arises. Client further expressly acknowledges that all statements of the Attorney on these matters are statements of opinion only.

XIV. POWER OF ATTORNEY TO EXECUTE DOCUMENTS

Client hereby gives Attorney Client's power of attorney to execute all documents connected with the claim for the prosecution of which the Attorney is retained, including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals, and orders, and all other documents which Client could properly execute. Attorney is also authorized and empowered to act as negotiator in any and all settlement negotiations.

XV. COOPERATION OF CLIENT

Client shall keep the Attorney advised of Client's whereabouts at all times, including any change of address, telephone number or business affiliation, shall appear on reasonable notice at any and all depositions and court appearances, and shall comply with all reasonable requests of Attorney in connection with the preparation, handling and presentation of the aforesaid claim or cause of action.

XVI. ARBITRATION

Any controversy arising out of or relating to this contract or any modification or extension thereof, including any claims for breach, for damages, and/or for recision or reformation, shall be settled by binding arbitration in Harris County, Texas, according to the rules and regulations of the American Arbitration Association, and as provided by the Texas Arbitration Act. The parties further agree that any such arbitration proceedings must be instituted within two (2) years after notice that any claimed breach has occurred. Failure

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to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any such proceedings and a waver of all claims.

XVII. TEXAS LAW TO APPLY

This agreement and any dispute between Client and Attorney shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Harris County, Texas.

XVIII. PARTIES BOUND

This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this agreement.

XIX. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any provisions thereof, and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

XX. PRIOR AGREEMENTS SUPERSEDED

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreement between the parties respecting the within subject matter. This agreement can be modified or changed only in writing and signed by all parties.

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XXI. ACKNOWLEDGMENT

Client acknowledges having read this Attorney Fee Contract and Assignment of Interest in its entirety, it being eight (8) pages in length, that Client fully understands the terms and conditions of same and agrees to abide by the terms hereof.

EXECUTED on the 27th day of August, 1998.

CLIENTS:

Charles Harold Zoeller, Jr., Individually

Dina Zoeller, Individually

Charles Harold Zoeller, Jr. as Parent, Guardian and Next Friend of Mike Wilson Zoeller

Dina Zoeller, as Parent, Guardian and Next Friend of Mike Wilson Zoeller

ACCEPTED:

VAHLDIEK & CANO, P.L.L.C.

By: **Paul R. Vahldiek, Jr.**

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LAW OFFICES OF DANIEL "PETE" PETROSKI
3850 One Houston Center
1221 McKinney
Houston, Texas 77010

Telephone: (713) 650-3200
Facsimile: (713) 650-0251
Cynthia.sanchez@vcghp.com

March 6, 2002

Delivery by Certified Mail, Return Receipt Requested

KMART CORP.
c/o Trumbull Services
P.O. Box 426
Windsor, Connecticut 06095

Re: Proof of Claim Forms
Bankruptcy Case No. 02 B 02474; ***Kmart Corporation, et al.***

To Whom it May Concern:

Enclosed are three (3) claim forms filed on behalf of Mike Zoeller, a Minor Child, Dina Zoeller and Charles Zoeller.

Please return a file stamped copy to our office in the enclosed prepaid envelope. Kind regards.

Sincerely,

Cynthia Sanchez
Legal Assistant to Pete Petroski

Enclosures