

EXHIBIT G

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

In re:)	
)	Case No. 02 B 02474
)	
KMART CORPORATION,)	
)	Chapter 11
Debtor.)	Judge Susan Pierson Sonderby
)	

DECLARATION OF THOMAS W. AVERY

I, Thomas W. Avery, having personal knowledge of the facts contained in this declaration and being competent to testify to them, hereby state as follows:

1. I am a Vice President for the operations of the electronic discovery group at Precision Discovery, LLC, an IT risk and litigation consulting firm. I have more than 20 years of combined experience in electronic discovery, computer forensics, investigations and training. I have been involved in numerous electronic discovery engagements involving Fortune 500 companies. A copy of my CV is attached hereto as Exhibit A.

2. Precision Discovery was retained by Kmart to analyze Global's proposal and to determine whether it is technically feasible to identify and collect data from the P and W drives relating to Global's claims. I submit this declaration in connection with Kmart's Motion to Shift Electronic Discovery Costs relating to Global Property Services, Inc.'s ("Global") request for information residing on Kmart's P and W drives.

3. Although it is likely technically possible to collect and identify data relevant to this litigation from the P and W drives, the cost of doing so is substantial. Our proposal, which is a five-phased approach, is presented below.

A. Phase 1: Data collection.

4. Data relevant to this matter is likely contained in 38 folders that reside on the P and W network shares. These folders represent an approximate total of 2.865 terabytes of data. Approximately 400 GB of this data resides on two local servers (uskihfil5 and uskihsvpdfs03) while the remainder of the data resides on the SAN. The network environment is complex because the data resides on different types of storage devices.

5. I recommend introducing a single server into the Kmart network that has enough internal storage to acquire the 2.865 terabytes in question by copying the data over the 100 MBPS network. The data acquisition could likely be accomplished utilizing Microsoft's RoboCopy, which would preserve the file system metadata related to each file. Due to the high volume of usage of the Kmart network in connection with the ordinary business operations of the company, data collection would be limited to weekends and off-hours as designated by the Kmart staff so as to have a minimal impact on Kmart's day-to-day operations and the daily backups of the network. Because of the limited time to conduct the data collection, Precision Discovery estimates that it will take approximately 10 weeks to acquire the targeted data. Of course, this estimate may vary due to network traffic, disk access or other unforeseen issues that could arise during the data acquisition. The storage server could likely be remotely accessed by Precision Discovery personnel, and will not likely require a physical presence of Precision Discovery staff.

6. Precision Discovery estimates that it will cost \$18,000 to acquire the data (excluding travel costs). The bases for the estimate is as follows:

Install/configure server	=	\$3,375 (15 hours @ \$225/HR)
Collect data and validation of same	=	\$14,625 (65 hours @ \$225/HR)

B. Phase 2: Searching.

7. Precision Discovery recommends applying a search technology to the collected data set. First, an index would be compiled for each document to enable the data set to be readily searched. The results of each search, including the underlying responsive document, would be available to Kmart's counsel for review. Because numerous keyword searches can be run quickly, this method is effective in distilling the keywords to develop an effective search term list. Once the keyword list has been set, the responsive files will be extracted from the data set, original file system metadata intact, and be processed utilizing Precision Discovery's distributed processing platform.

8. Precision Discovery estimates that it will cost \$71,625 to index the acquired data population (indexing 2.865 terabytes at \$25/GB), and approximately \$5,000 in additional consulting costs. As discussed above, additional keyword searches and/or date range searches will not have a significant impact on cost. However, it should be noted that the cost estimate set forth above does *not* include counsel's time to review the keyword search hits and to evaluate the results.

C. Phase 3: Data Processing.

9. During the data processing phase, responsive data will have its associated metadata extracted and fielded so that it can be hosted in an online database for counsel's review for relevancy and privileged information. At this point, it is not clear how much responsive data the final keyword set will yield. Based on Precision Discovery's experience, responsive data can range from 10% to 50% of the searched data.

10. Precision Discovery will charge \$600 per gigabyte for data processing. Based on the estimate of potentially responsive data (*i.e.*, 10% - 50%), the cost will range from \$171,900

to \$859,500. I stress that this is only an estimate. The actual responsive data set will vary in size depending on the keywords applied to the data. If the keywords are broad and general, the size of the data set may exceed 50% and the cost of processing would increase accordingly. As discussed above, given the broad search terms relevant to this litigation, we are concerned that the volume of responsive data will be at the high end of the estimate.

D. Phase 4: Data hosting and review.

11. The next phase is the hosting of the data by Precision Discovery in an online database accessible to Kmart's counsel for counsel's review of the data for responsive and privileged information.

12. Precision Discovery will charge \$50/GB per month for hosting the data. There will be a \$100 user license fee per month for each user that accesses the database. Based on the above estimates, if 10% of the data is responsive, then the monthly hosting fees would be \$14,325. If 50% of the data is responsive, then the monthly hosting fees would be \$50,137. Again, we stress that these are only estimates and that the actual size of the responsive data set depends largely on the keyword list.

13. Set forth below is the estimated cost for the review of the hosted data. For these purposes, we are assuming a 10% responsive rate for the collected data. As discussed above, the targeted data set is approximately 2.865 terabytes. If 10% of that data is responsive to keywords, then 286 gigabytes of data will need to be hosted for review. The estimate is based on the following assumptions, which Precision Discovery believes are conservative:

- 1 GB equals approximately 10,000 electronic pages (Precision Discovery has encountered data where a single gigabyte of data has contained 75,000 pages)
- Average document size is 3 pages. If the net result is 10,000 pages per GB, then there will be approximately 3,300 documents per GB (rounded down)

- Based on 286 GB of data averaging 3,300 documents per gigabyte, the review population will be 943,800 documents.
- The average reviewer can review 400 documents per day (very high estimate). At that rate, it would take 2,359 days for a single reviewer to review this data set.
- Because it is not reasonable for a single reviewer to conduct the review, a team of reviewers would be required to review this data set. We assume 20 contract attorneys could review the entire data set in 117 review days.
- We assume a contract attorney billing rate of \$200 per hour and an 8 hour work day. The approximate cost of the review would be \$3,744,000.

14. We stress that this estimate is based on a conservative data set size of 10%.

Further, this cost is in addition to all other electronic discovery costs associated with this proposal.

E. Phase 5: Production.

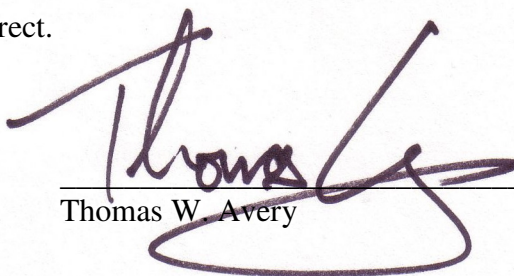
15. Assuming the production proceeds to this phase, the final phase is document production in TIFF format. Precision Discovery charges \$0.06 per page to render TIFF images, \$0.01 per page to endorse a Bates number, and \$0.01 per page to endorse a message such as “Confidential.” Because of the numerous variables at issue, we do not provide an estimate for production.

16. **Cost summary:**

Cost of collection	\$18,000
Cost of indexing	\$71,625
Cost of data processing	\$171,000 (based on a 10% hit rate)
Cost of hosting data	\$14,325/ per month (estimated 4 months)
Cost of attorney review	\$3,744,000
Cost of production	<u>Unknown</u>
	<u>At least, \$4,061,925</u>

17. I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on March 19, 2009.



Thomas W. Avery

EXHIBIT A

Thomas W. Avery, A+, N+, EnCE, CISSP

Qualifications

Information technology expert with more than 20 years of combined experience in electronic discovery, computer forensics, investigations and training. Well versed in the management of large and complex investigations. Skilled at managing large scale electronic discovery engagements involving Fortune 500 companies. Substantive experience in conducting computer forensic investigations involving a wide range of matters such as theft, bank fraud, intellectual property theft, Internet usage and online auction fraud. Court qualified expert witness.

Summary of Professional Experience

Vice President, Precision Discovery September 2008 – Present
Responsible for the operations of the electronic discovery group at Precision Discovery. Oversee day-to-day technical operations, project management, client relations and business development efforts for the group. Instrumental in the overall data center infrastructure design as well as the software design and implementation. Possess a detailed and technical understanding of the electronic discovery environment as well as all of the technical details related to forensic collection, processing, hosting and production.

Senior Director, Aon Consulting January 2006 – September 2008
Served as head of operations for electronic discovery group. Played a vital role in the development of the company's e-discovery platform. Responsibilities included managing a data center. Managed electronic discovery team in recovering deleted and encrypted data from computers and servers. Performed forensic examinations of forensic evidence for major law firms and corporations.

Director, Kroll October 2005 – January 2006
Responsible for managing large scale and complex computer forensic matters relating to theft of intellectual property, corporate raiding as well as corporate fraud. Worked with both corporate clients and their outside counsel to prepare for trial. Testified as a forensic expert in California State civil matters.

Instructor May 2003 – October 2005
Advanced Training Center of the California Department of Justice
Developed training programs for California law enforcement officers on Internet and e-mail investigations. Created course materials. Served as course instructor. Active with the California Bar Association on defining the "standards" of forensic collections utilized throughout the State of California.

Investigator, Orange County Sheriff's Department November 1989 – October 2005
Conducted Internet and network intrusion investigations. Managed the design, procedures and operation of the computer crimes unit. Responsible for the first forensic computer network at the Orange County Sheriff's Department. Wrote a white paper on the advantages of forensic networks to assist with other California law enforcement agencies in the development of their own forensic networks. Worked on a variety of criminal matters including homicide, sex-related crimes, theft, fraud and gambling.

Education

Professional Certifications

- Certified Information Systems Security Professional (CISSP)
- EnCase Certified Examiner (EnCE)
- CompTIA Network+ Certification
- CompTIA A+ Certification

**Summary of
Professional
Training**

- EnCase Introduction Computer Forensics
- EnCase Intermediate Computer Forensics
- EnCase NTFS File Structure
- EnCase Linux Operating System/Forensic Analysis
- EnCase Advanced Internet and Email
- EnCase Advanced Network Intrusion
- National White Collar Crime Center NTFS File Structure
- California Department of Justice Internet Investigation
- California Department of Justice Advanced Computer Forensics
- California Department of Justice Internet and E-mail Investigations
- California Department of Justice Advanced Network Intrusion
- SEARCH Seizure and Examination of Computers

Full list of training available upon request.

Publications

Co-Author, "Avoiding the Review and Production Money Pit: Strategies for Maximizing Cost Savings," *The Metropolitan Corporate Counsel*, October 2007.

Co-Author, "Electronic Discovery Processing: What You Need to Know to Maximize Success in Winning Cases and Cutting Costs," *The Metropolitan Corporate Counsel*, October 2007.

Co-Author, "Understanding the World of Email: How It Can Significantly Increase or Decrease the Costs of Electronic Discovery – Part I," *The Metropolitan Corporate Counsel*, September 2007.

Co-Author, "Understanding the World of Email: How It Can Significantly Increase or Decrease the Costs of Electronic Discovery – Part II," *The Metropolitan Corporate Counsel*, September 2007.

Co-Author, *Technology Crimes and Forensics*, LawTech Custom Publishing, Inc., 2005.

**Expert
Testimony**

State of California v. Neilsen, Harbor Superior Court, February 2007.

Marsh McClennan v. David Evans, Superior Court of Manhattan, June 2006.

Optimal Water v. Eric Robbins, Central Superior Court, May 2006;

State of California v. Tartaglia, Central Superior Court, May 2005.

State of California v. Neilsen, West Superior Court, May 2003.

State of California v. Nguyen, West Superior Court, April 2000.