

Return Date: October 28, 1998  
Time: 10:00 a.m.

UNITED STATES DISTRICT BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

ALLIANCE ENTERTAINMENT CORP.,  
et al.,

Debtors.

Chapter 11

Case No. 97B 44673 (BRL)

Jointly Administered

**APPLICATION OF BANKERS TRUST COMPANY, AS INDENTURE TRUSTEE FOR  
AN ORDER ALLOWING THE FEES AND ACTUAL AND NECESSARY EXPENSES  
OF THE INDENTURE TRUSTEE, REASONABLE COMPENSATION FOR ITS  
ATTORNEYS' FEES AND REIMBURSEMENT OF ATTORNEYS' EXPENSES  
PURSUANT TO 11 U.S.C. §§ 503(B)(1)(A), (B)(3)(D), (B)(4) AND (B)(5)**

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

Bankers Trust Company, as Indenture Trustee (the "Trustee") for the holders (the "Noteholders") of 11-1/4% Senior Subordinated Notes in the original principal amount of \$125,000,000 due 2005 issued by Alliance Entertainment Corp. and guaranteed by certain of its affiliates, by its counsel, Seward & Kissel, hereby submits its application (the "Application") for the payment of its fees and expenses as an administrative priority expense pursuant to 11 U.S.C. §§ 503(b)(1)(A), (b)(3)(D), (b)(4) and (b)(5), and in support thereof respectfully represents as follows:

A. The Trustee and the Indenture

1. Bankers Trust Company ("Bankers Trust") was Trustee under the Indenture dated as of July 25, 1995, as supplemented by First Supplemental Indenture dated July 26, 1995, Second Supplemental Indenture dated as of September 6, 1995 and Third Supplemental

Indenture dated as of February 26, 1996 (collectively, the “Indenture”) by and between Bankers Trust as Indenture Trustee, Alliance Entertainment Corp., as Issuer (the “Issuer” or the “Debtor”), and those subsidiaries of the Debtor identified on Exhibit F of the Indenture as guarantors (the “Guarantors”). Certain of the Guarantors under the Indenture are affiliated Chapter 11 debtors of the Issuer (collectively, the “Debtor Guarantors”) and certain of the Guarantors under the Indenture are solvent non-debtor foreign affiliates of the Debtor (the “Foreign Guarantors”).

2. Pursuant to the Instrument of Resignation, Appointment and Acceptance, dated as of October 21, 1997 (the “Instrument”) among the Issuer, Bankers Trust as Indenture Trustee and Marine Midland Bank as Successor Indenture Trustee and the Court’s order dated October 14, 1997, approving that document, Bankers Trust resigned as Trustee and Marine Midland Bank became the successor trustee. Bankers Trust provided Marine Midland Bank with documents and information designed to assure a smooth transition and continued representation of the Noteholders in the bankruptcy cases and on the Creditors’ Committee.

3. Pursuant to Section 8.07 of the Indenture, the Debtor, jointly and severally with the Debtor Guarantors, agreed to pay Bankers Trust compensation for its services as Trustee.

4. Pursuant to Section 8.07 of the Indenture, the Debtor, jointly and severally with the Debtor Guarantors, agreed to pay or reimburse Bankers Trust for all reasonable expenses incurred in connection with the administration of the Indenture, including reasonable legal fees and expenses.

5. Pursuant to Section 8.07 of the Indenture, the Debtor, jointly and severally with the Debtor Guarantors, agreed to indemnify Bankers Trust “against any and all losses,

liabilities or expenses” (including reasonable legal fees and expenses) incurred by Bankers Trust and relating to the Indenture.

6. Bankers Trust previously filed a proof of claim for pre-petition fees and expenses, including attorneys’ fees and expenses. In its proof of claim, Bankers Trust asserted entitlement to an administrative priority for its fees and expenses (including attorneys’ fees and expenses) incurred after the Debtor and the Debtor Guarantors filed their Chapter 11 petitions.

7. Pursuant to Section 8.07 of the Indenture, the Trustee has a lien on any and all distributions, dividends, money, securities and other properties that the Noteholders may be entitled to recover in this case for the payment of any of its fees and expenses and for the fees and expenses of its legal counsel.

B. The Chapter 11 Cases

8. On July 14, 1997, Alliance Entertainment Corp. and certain of its affiliates (collectively, the “Company” or the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). This filing was an Event of Default under the Indenture and obligated the Trustee to act as a prudent man would in the management of his own affairs. Indenture §§ 7.01 (Event of Default) and 8.01(1) (Duties of the Trustee). The Trustee retained the firm of Seward & Kissel to assist it in carrying out its responsibilities. Indenture § 8.02(5).

i) Participation on Creditors’ Committee

9. On or about July 23, 1997, the Trustee was appointed by the Office of the United States Trustee to serve on the Official Committee of Unsecured Creditors for the Debtors (the “Creditors’ Committee”).

10. The Trustee was an active participant at the organizational meeting of Creditors and numerous Creditors' Committee meetings. The Trustee played an important role in developing committee governance and the selection of committee professional.

11. The Trustee worked closely with the Creditors' Committee in protecting the rights of Noteholders, who comprise the largest group of unsecured creditors, and all unsecured creditors by carefully reviewing and analyzing the Debtors' filings and participating in committee deliberations.

12. In particular, to further the position of Noteholders and other general unsecured creditors, the Trustee's counsel participated at the August 6 and 13, 1997, hearings relating the Debtors' debtor-in-possession financing and carefully reviewed the Standstill Agreement dated as of July 14, 1997 between the Debtors, the Guarantors and the Debtors' secured lenders.

ii) Debtors' TRO and Preliminary Injunction Motion

13. Contemporaneous with the filing of the Debtors' Chapter 11 cases, the Debtors' commenced an adversary proceeding seeking to enjoin the Trustee and the Noteholders from taking any action to collect principal and interest due on the notes from the Foreign Guarantors. The Debtors also sought to enjoin the Trustee and the Noteholders from seeking any bankruptcy or similar relief against the Foreign Guarantors notwithstanding the law of any foreign country which gives creditors the right to seek such relief. The injunctive relief requested would deprive Noteholders of important contractual rights.

14. On July 14, 1998, the Court issued an ex parte Order to Show Cause for Preliminary Injunction With Temporary Restraining Order granting the Debtors' temporary injunctive relief.

15. Working on an extremely short timetable, on July 22, 1998, the Trustee, through its counsel, prepared and filed a Response and Objection to the Debtors' motion for a preliminary injunction articulating the harm and prejudice to Noteholders that would be occasioned by the requested preliminary injunction and the legal arguments in support of denying the motion. The Trustee's counsel prepared for and attended the July 24 and 27, 1997, hearings on the motion. Due to the short notice of the motion, the Trustee was the only party who played an active role in representing Noteholders' and other general unsecured creditors' interest, particularly since the Creditors' Committee was not yet in a position to participate fully.

16. The Trustee was able to successfully negotiate a resolution of the preliminary injunction motion just prior to the July 24, 1997 hearing. The resolution was comprised of an agreed-to injunction which protected Noteholders and general unsecured creditors by enabling them to take action with respect to the Foreign Guarantors in the event the Debtors' secured lenders were no longer constrained by their Standstill Agreement with the Debtors from taking action against the Foreign Guarantors. The resolution also provided for notification to the Trustee of certain events and bound the Foreign Guarantors not to transfer property outside of the ordinary course of business.

17. As part of the resolution, the Trustee agreed to arrange for distribution of a notice of the Debtors' Chapter 11 cases and the Order to Show Cause to all Noteholders of record.

18. The consensual resolution of the Debtors' preliminary injunction motion benefited the Debtors, their estates and all general secured creditors by ensuring that certain key creditor rights relating to the Foreign Guarantors were preserved and avoiding the expense and time associated with protracted litigation on unsettled issues of law.

iii) Other Services

19. In addition to the pivotal role in the preliminary injunction motion and on the Creditors' Committee, the Trustee also communicated with Noteholders regarding the Chapter 11 cases and filed a notice of appearance and Bankruptcy Rule 2019(a) statement. Finally, the Trustee prepared and filed proofs of claim to preserve the pre-petition claims of the Trustee and the Noteholders.

**RELIEF REQUESTED**

20. The non-legal services performed by Bankers Trust since the filing date through its resignation have resulted in Bankers Trust incurring \$11,037.92 in fees and \$85.00 in expenses.

21. This amount includes its pro rata share of the annual administration fee and the fees and expenses of distributing the Order to Show Cause to Noteholders. All services and expenses are billed in accordance with the pre-petition fee agreement with Debtor. Copies of Bankers Trust's records reflecting these fees and expenses are attached as Exhibit A.

22. The legal services provided by Seward & Kissel to Bankers Trust for the period of July 14, 1997 through August 25, 1998 regarding the Debtors' Chapter 11 cases resulted in fees of \$49,167.50 and expenses of \$616.28 for a total of \$49,783.78. A copy of Seward & Kissel's statement reflecting these charges is attached as Exhibit B. The Trustee has excluded from this statement Seward & Kissel's legal charges relating to the resignation of Bankers Trust as Trustee and the appointment of Marine Midland Bank as successor trustee.

23. Bankers Trust is entitled pursuant to 11 U.S.C. § 503(b)(1)(A) to its own fees that are billed in accordance with its pre-petition fee agreement with the Debtors as an ordinary expense of preserving the estate. Bankers Trust submits that its expense claims should also be allowed under 11 U.S.C. §§ 503(b)(3)(D) and (b)(5) as constituting a substantial contribution to the Debtors' estates and the fees and expenses of its counsel should therefore be allowed under 11 U.S.C. § 503(b)(4). See In re Texaco, 90 B.R. 622, 630-32 (Bankr. S.D.N.Y. 1988); In re Revere Cooper and Brass, Inc., 60 B.R. 892, 897-98 (Bankr. S.D.N.Y. 1986).

WHEREFORE, Bankers Trust respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit C, allowing it an administrative claim of \$11,037.92 for its fees and \$85.00 for its own expenses during the cases and an allowance of \$49,167.50 for attorneys fees, together with reimbursement for actual and necessary expenses of its attorneys in the amount of \$616.28 for a total award of \$60,906.70; and grant Bankers Trust such other and further relief as is just and proper.

Dated: New York, New York  
October 5, 1998

SEWARD & KISSEL

By: /s/ Ronald L. Cohen  
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