

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 MARINE MIDLAND BANK, AS SUCCESSOR  
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

Marine Midland Bank, as Successor Indenture Trustee (the "Trustee" or "Successor 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. Marine Midland Bank ("Marine" or "Claimant") is Successor 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. Marine serves as Successor Trustee under 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. Marine worked with Bankers Trust to assure a smooth transition between trustees and was provided with documents and information designed to assure 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 Marine 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 Marine 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 Marine “against any and all losses, liabilities or

expenses” (including reasonable legal fees and expenses) incurred by Marine and relating to the Indenture.

6. Marine previously filed a proof of claim for its own fees and expenses and the fees and expenses of its attorneys, Seward & Kissel. In its proof of claim, Marine asserted entitlement to an administrative priority for its fees and expenses (including attorneys' fees and expenses), all 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 Successor Trustee retained the firm of Seward & Kissel, which had represented Bankers Trust, the predecessor Trustee, and was familiar with the Debtors’ Chapter 11 cases, to assist it in carrying out its responsibilities. Indenture § 8.02(5).

9. The Successor 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”) in place of the predecessor trustee, Bankers Trust.

10. The Trustee immediately became an active participant at the numerous Creditors' Committee meetings. The Trustee's counsel also met with counsel for the Creditors' Committee regarding the investigation of potential causes of action for the liquidation trust that was established by the Debtors' plan of reorganization for the benefit of all general unsecured creditors.

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. 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 predecessor trustee negotiated a resolution of this litigation in the form 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.

13. The Trustee continued to monitor events relating to the Foreign Guarantors and the Standstill Agreement to ensure that the Noteholders' interests continued to be protected.

The Trustee's counsel also prepared and filed an answer to the complaint filed by the Debtors in the adversary proceedings.

14. The Trustee carefully reviewed and commented on the Debtors' plan and disclosure statement and worked with the Debtors to coordinate the distribution of plan-related materials, including notices and balloting packages, to Noteholders of record. The Trustee's counsel attended the June 23, 1998 and July 30, 1998 hearings to consider approval of the Debtors' disclosure statement and confirmation of the Debtors' plan of reorganization. The Trustee continued to work with the Creditors' Committee after confirmation to resolve outstanding issues relating to the liquidation trust and distributions to general unsecured creditors.

15. In addition to its continued 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**

16. The non-legal services performed by Marine since the filing date have resulted in Marine incurring \$24,485.00 in fees and \$336.87 in expenses.

17. This amount includes its pro rata share of the annual administration fee and the fees and expenses of distributing notices to Noteholders. Copies of Marine's records reflecting these fees and expenses are attached as Exhibit A.

18. The legal services provided by Seward & Kissel to Marine for the period of October 21, 1997 through August 25 1998 regarding the Debtors' Chapter 11 cases resulted in

fees of \$48,694.75 and expenses of \$2,176.04, for a total of \$50,870.79. A copy of Seward & Kissel's statement reflecting these charges is attached as Exhibit B.

19. Marine is entitled pursuant to 11 U.S.C. § 503(b)(1)(A) to its own fees that are billed in accordance with its fee agreement with the Debtors as an ordinary expense of preserving the estate. Marine 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, Marine respectfully requests that the Court enter an order, substantially in the form annexed hereto as Exhibit C, allowing it an administrative claim of \$24,485.00 for its fees and \$336.87 for its own expenses during the cases and an allowance of \$48,694.75 for attorneys fees, together with reimbursement for actual and necessary expenses of its attorneys in the amount of \$2,176.04 for a total award of \$75,692.66; and grant Marine 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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Indenture Trustee

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