

Martin J. Murray (MM-5103)  
MORGAN, LEWIS & BOCKIUS LLP  
Attorneys for the Unofficial Committee  
of Secured Trade Vendors  
101 Park Avenue  
New York, New York 10178-0060  
(212) 309-6000

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: October 28, 1998  
HEARING TIME: 10:00 a.m.

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In re : Chapter 11  
: Case Nos. 44673-97 (BRL) through  
ALLIANCE ENTERTAINMENT : 44675-97 (BRL) inclusive  
CORP., et al. : (Jointly Administered)  
:   
Debtors. :   
-----X

**MOTION, PROPOSED ORDER AND SUPPORTING AFFIDAVITS  
AND EXHIBITS OF THE UNOFFICIAL COMMITTEE OF  
SECURED TRADE VENDORS FOR PAYMENT OF  
SUBSTANTIAL CONTRIBUTION CLAIM PURSUANT  
TO SECTIONS 503(b)(3)(D) AND 503(b)(4) OF THE BANKRUPTCY CODE**

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

The Unofficial Committee of Secured Trade Vendors (the “Trade Committee”) organized in these cases comes by its counsel, Morgan, Lewis & Bockius LLP (“ML&B”), and submits this motion (the “Motion”) for an order pursuant to section 503(b) of Title 11 of the United States Code (the “Bankruptcy Code”) allowing reimbursement for reasonable compensation for legal services rendered and actual and necessary expenses incurred during the period from July 14, 1997 (the “Petition Date”) through and including September 22, 1998 (the “Application Period”), in making a substantial contribution to the reorganization of Alliance

Entertainment Corp., et al., (collectively, the “Debtors”) and in support thereof respectfully represents:

### Introduction

1. The Trade Committee has played a unique, important and influential role in the successful reorganization of these Debtors. Without its positive participation in these proceedings, its ability to successfully mediate and facilitate the resolution of intercreditor and creditor-debtor issues and its direct post-petition and post-confirmation support of the Debtors, the Debtors would not have emerged from chapter 11. For these reasons and others which are explained more fully below, the Trade Committee respectfully requests payment for a portion, but not all, of its substantial contribution to these cases.

### Background

2. The factual background for this Motion is set forth in detail in the accompanying affidavits of Robert M. Baker, Jr., Chairman of the Trade Committee, (the “Baker Affidavit”) and Eric Weisman, President and Chief Executive Officer of Alliance Entertainment Corp., (the “Weisman Affidavit”) to which we respectfully refer the Court.

3. The Trade Committee consists of the following trade creditors: (i) BMG Distribution Company; (ii) EMI Music Distribution, a division of Capital Records, Inc.; (iii) PolyGram Group Distribution, Inc.; (iv) Sony Music Entertainment, Inc.; (v) Universal Music & Video Distribution, Inc.; and (vi) WEA (Warner/Elektra/Atlantic) Corp. Together these six companies represent the six largest distributors of pre-packaged music in the world.

4. The Debtors filed their Voluntary Petitions for Relief under chapter 11 of the Bankruptcy Code on July 14, 1997. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors have continued to operate their business and manage their affairs as debtors in possession.

5. On July 23, 1997, the United States Trustee appointed (1) Mainstay Funds, (2) Caroline Records, (3) Instinct Records, (4) TDK Electronics, (5) Disctronics Texas Inc., (6) Gibson Productions, (7) Triad Records, Inc., (8) The Harry Fox Agency, Inc., (9) United Parcel Service, (10) Bankers Trust Company as Indenture Trustee and (11) Rumpere Capital to serve as members of the Official Committee of Unsecured Creditors (the "Official Committee") pursuant to section 1102 of the Bankruptcy Code.

6. On June 25, 1998 the Debtors filed their Second Amended Disclosure Statement for Joint Plan of Reorganization (the "Disclosure Statement"). The Court entered an Order Approving the Disclosure Statement on June 25, 1998.

7. On July 30, 1998, the Debtors presented their Third Amended Joint Plan of Reorganization (the "Plan") to the Court. The Plan was confirmed by written order of this Court on July 30, 1998, and was substantially consummated on the Effective Date, August 20, 1998.

#### Overview of Fees and Expenses

8. The legal services which ML&B rendered to the Trade Committee are reported by ML&B's billing system for the period beginning July 14, 1997 and ending September 22, 1998. ML&B expended 2,070.10 hours in rendering such legal services to the Trade Committee. Based on ML&B's usual and normal hourly billing rates, the legal services rendered

by ML&B to the Trade Committee would entitle it to fees totaling \$576,335.50. ML&B incurred expenses of \$29,001.03 for and during the same period.

9. A summary of the time expended by each ML&B professional for whose services compensation is being sought, together with a specification of each professional's normal and usual billing rates and the required description of each professional's certification dates, is attached hereto and incorporated herein as Exhibit "A".

10. ML&B customarily generates a billing report known as a Matter Detail Report which sets forth the services performed on each day, identifies the professionals that performed the services and describes the activities undertaken. A true and correct copy of ML&B's Matter Detail Report for all work performed from July 14, 1997 through September 22, 1998 is attached hereto and incorporated as Exhibit "B." The Matter Detail Report attached hereto as Exhibit B describes in detail all work that ML&B performed on behalf of the Trade Committee for the time period in question.

11. All of the services set forth in Exhibit B, and for which the Trade Committee requests reimbursement, were necessary and required for the Trade Committee to make the substantial contribution to the cases for which it now seeks a reimbursement award and helped the Trade Committee benefit the Debtors' estates by enabling the Debtors' successful and timely emergence from chapter 11. ML&B routinely attempted to assign tasks and projects to that individual attorney or legal assistant with the lowest billing rate possible commensurate with that person's skill, background, responsibility and expertise.

12. A summary of ML&B's requested reimbursement of expenses and disbursements is attached hereto and incorporated herein as Exhibit "C". An itemization of the

requested reimbursement of expenses and disbursements is attached hereto and incorporated herein as Exhibit “D”.

#### Role of the Trade Committee

13. Since the inception of the Debtors’ cases, the Trade Committee, composed of experienced and sophisticated professionals in the retail music and home video industry, has played an active role in these proceedings and helped the progression of these cases in numerous ways. Illustrative of its contributions to these cases, are the following:

a. Active Participation. During the course of these proceedings, the Trade Committee convened more than 21 separate meetings or conference calls to discuss the status of the Debtors’ cases and review appropriate strategies. ML&B actively participated in 23 hearings held before this Court on various matters. The Trade Committee participated in 22 separate meetings or conference calls with the Debtors, the Bank Group and the Official Committee.

b. Debtors in Possession Working Capital Facility (the “DIP Facility”). The Trade Committee actively participated in the negotiations concerning the terms and conditions of the DIP Facility. The Trade Committee reviewed the terms and conditions of the DIP Facility and provided suggested revisions thereto. Moreover, at a point in the proceedings where the outcome was far from certain, the members of the Trade Committee were asked to and did incur significant risk in supporting the proposed DIP Facility because members of the Trade Committee were required to subordinate their existing liens on the Debtors’ assets to both the DIP Lenders who were granted a priming first priority lien in all of the Debtors’ existing

and after-acquired assets under the terms of the DIP Facility and to the Pre-Petition Lenders who were granted a second priority lien in all of Debtors' existing and after-acquired assets.

c. Development and Implementation of Section 546(g)\*

Returns/Credit Program. Following the enactment of the Bankruptcy Reform Act of 1994, Debtors' bankruptcy was the first case in which a so-called "one-stop" (or wholesale distributor) in the pre-recorded music industry would successfully emerge from bankruptcy and only the second case in which individual consents to enter into a section 546(g)\* return program ultimately were obtained from **all six members** of the Trade Committee.<sup>1/</sup> The Trade Committee was instrumental in developing the prototype section 546(g)\* template agreement. This agreement enabled the Debtors to obtain post-petition credit from each of the six Trade Committee members in exchange for the Debtors' ability to make returns of products which the Debtors did not want and could not sell. Moreover, as discussed above, individual members of the Trade Committee incurred significant risk by participating in the section 546(g)\* program because the Trade Committee's liens were subordinated to the liens of both the DIP Lenders and Pre-Petition Lenders. In total, 22 trade vendors executed section 546(g)\* agreements with the Debtors based upon the prototype section 546(g)\* agreement which the Debtors developed with the Trade Committee. The section 546(g)\* program provided Debtors with approximately \$35 million of incremental post-petition credit. Without the Trade Committee's assumption of the lead role in developing the prototype section 546(g)\* agreement with the Pre-Petition Lenders, the DIP Lenders and the Debtors, these transactions would not have been consummated and significant

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<sup>1/</sup>By way of contrast, in the Wherehouse Entertainment, Inc. chapter 11 proceeding (U.S. Bankruptcy Court, D. of Delaware), only three of the six "majors" participated in the considerably less risky § 546(g)\* program developed in that case.

and sorely needed incremental post-petition credit would not have been made available.

d. Joint Interest Agreement with Official Committee. Within the first few months of the Debtors' filing, the Trade Committee negotiated the Joint Interest Agreement (the "Agreement") with the Official Committee. This Agreement allowed the Trade Committee to access certain information prepared by the Official Committee's financial advisor, Chanin and Company LLC ("Chanin"). The Trade Committee's decision to forego hiring its own financial advisor in this case benefitted the Debtors' estate because it minimized administrative expense and avoided duplication of effort that otherwise would have occurred.

e. Financial Advisors. The Trade Committee actively participated in the selection and retention of the Debtors' financial advisors - first, Salomon Brothers, Inc. (now Salomon Smith Barney) and then, The Blackstone Group, L.P., by thoroughly reviewing potential candidates and thereafter suggesting revisions to their respective proposed retention agreements.

f. Plan Development Negotiations. The Trade Committee also participated in the development of the Debtors' business plan and provided valuable insight into the operation of the Debtors' core businesses based upon the Trade Committee's own distribution experiences, including advice regarding the timing of implementation of the Debtors' warehouse automation program at its Coral Springs, Florida facility. In addition, the Trade Committee worked closely with both the Bank Group and their advisors and the Debtors and their advisors in developing the construct of a viable financial and capital structure of the Debtors under the Plan.

g. Confirmation of the Plan. Although the Trade Committee itself

derived limited benefit under the Plan, the Trade Committee provided invaluable support for the Plan and was instrumental in resolving the Official Committee's Objections to the Plan. After the Official Committee had filed its Objections to the Plan, Trade Committee counsel initiated various discussions with and between the Debtors, the Bank Group and the Official Committee in an effort to resolve the Official Committee's objections. In addition, Trade Committee counsel suggested that a settlement conference be held with the Bankruptcy Court to attempt to resolve the Official Committee's Objections. On July 6, 1998, such a settlement conference was convened and laid the groundwork for the conclusion of successful plan negotiations in these cases. Despite the Trade Committee's various contributions towards the development and confirmation of the Plan, the Trade Committee members ultimately agreed to receive a distribution of only 4.9% of its total pre-petition claims,<sup>2/</sup> or \$5 million, under the Plan.

h. Sale of Red Ant. When the Debtors determined to sell Red Ant, the Trade Committee actively participated in the sale negotiations and was helpful in obtaining the highest price for Red Ant. When an unacceptably low purchase offer was submitted for Red Ant, both the Official Committee and the Trade Committee filed objections to the proposed sale. As a result of these objections, Debtors ultimately received a significantly higher sale price for Red Ant.

i. Deleveraged Company. The Trade Committee worked diligently throughout the bankruptcy case to ensure that Reorganized Alliance would emerge from bankruptcy with as little debt as possible. After lengthy discussions between the Trade Committee and the Bank Group and its advisors, the members of the Bank Group ultimately

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<sup>2/</sup>Exclusive of credits obtained pursuant to the § 546(g)\* program.



agreed to convert their debt to equity in order to increase the Debtors' ability to successfully reorganize. As a result, Reorganized Alliance has emerged from chapter 11 as a wholly deleveraged company except for its new working capital facility. The long-term benefit of the Trade Committee's insistence on a deleveraged Reorganized Alliance cannot be overstated.

j. Independent Directors. From the outset of this case, the Trade Committee recognized that the Debtors' Board of Directors lacked independent outside directors. In order to ensure the Debtors' successful emergence from bankruptcy, the Trade Committee worked closely with counsel for the Official Committee in insisting upon the appointment of independent directors to Alliance's Board of Directors. As a result of these combined efforts and with the support of the Bank Group, Alliance's Board of Directors appointed three independent outside directors, who have served the Debtors through and including the Effective Date.

k. Disposition of Debtors' Assets. The Trade Committee supported and facilitated the Debtors' efforts to liquidate their INDI subsidiary and to sell each of Castle Communications (US), Inc. and Concord Records, Inc. Because the Trade Committee understood the importance of efficiently disposing of the Debtors' non-core businesses, the Trade Committee monitored and assisted the Debtors in disposing of these assets. The Trade Committee's efforts transcended self-protection because these efforts only benefitted the Pre-Petition Lenders who would be recipients of the proceeds and Reorganized Alliance which would be better able to streamline and consolidate its remaining businesses.

l. Execution of Customary Trade Terms Commitment and Bank

Group Term Sheet. The key to development of a consensual plan which would permit the Debtors to emerge from chapter 11 as a viable entity in these cases was the conceptualization, development and negotiation of the Customary Trade Terms Commitment (the “Commitment Letter”) and the related Bank Group Term Sheet (the “Term Sheet”). In consideration of members of the Bank Group converting their debt to equity, members of the Trade Committee agreed to extend approximately \$70 million of new credit to Reorganized Alliance on the Effective Date. Under the terms of the Commitment Letter, as of the Effective Date, the Trade Committee committed to sell goods to Reorganized Alliance on normal and customary trade terms, including reinstatement of any prompt payment discounts. In addition, the Bank Group requested that the Trade Committee agree to limit its request for fees and expenses based on the Trade Committee’s substantial contribution to the Debtors’ bankruptcy cases to \$450,000.

#### Legal Argument

14. Pursuant to section 503(b)(3)(D) of the Bankruptcy Code, the court may allow, as an administrative expense of the case, the actual and necessary expenses of a committee representing creditors which makes a substantial contribution to the chapter 11 case. Pursuant to section 503(b)(4), the Court may further allow, as an administrative expense, reasonable compensation for professional services rendered by an attorney for such a committee. In re Richton International Corporation, 15 B.R. 854, 855 (Bankr. S.D.N.Y. 1981); Lebron v. Mechem Financial Inc., 27 F.3d 937, 943 (3d Cir. 1994); In re AM International, Inc., 203 B.R. 898, 904 (D.Del. 1996); In re Christian Life Center, 821 F.2d 1370, 1373 (9th Cir. 1987); In re Downtown

Investment Club III, 89 B.R. 59 (9th Cir. BAP 1988); In re D.W.G.K. Restaurants, Inc., 84 B.R. 684, 688-90 (Bankr. S.D. Cal. 1988).

15. Although the Second Circuit has not formally outlined the standards for a substantial contribution award, several bankruptcy courts and district courts for the Southern District of New York have discussed these standards. In determining whether a committee has made a “substantial contribution,” these courts generally have held that a committee’s services must “foster and enhance, rather than retard or interrupt the progress of reorganization”.

Richton, 15 B.R. at 856; In re Granite Partners, L.P., 213 B.R. 440, 446 (Bankr. S.D.N.Y. 1997); In re Best Products Co., 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994). In addition, courts should determine:

[w]hether the services in question were provided to benefit all parties in the case; whether the services conferred a direct, significant and demonstrably positive benefit upon the estate; and whether the services were duplicative of services performed by others.

In re Hooker Investments, Inc., 188 B.R. 117, 120 (D.N.Y. 1995), *aff’d*, 104 F.3d 349 (2d Cir. 1996). Creditors will be presumed to be acting in their own interest, and therefore will not qualify for an award of substantial contribution until they satisfy to the court that their efforts were not solely rendered for the benefit of their own clients. *Id.*; In re United States Lines, Inc., 103 B.R. 427, 430 (Bankr. S.D.N.Y. 1989), *aff’d*, 1991 WL 67464 (S.D.N.Y. 1991).

16. Certain factors which may support a substantial contribution award include whether the debtor and other creditor committees support the movant’s application for substantial contribution and whether the “court’s own first-hand observance of the services” constitute a substantial contribution to the case. In re Richton, 15 B.R. at 856; In re United States Lines, Inc.,

103 at 430; In re Granite Partners, L.P., 213 B.R. at 447. Courts also have followed the holding in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974) in determining the reasonableness of attorney's fees. In re Texaco, Inc., 90 B.R. 622, 631-632 (Bankr. S.D.N.Y. 1988); In re Nine Associates, Inc., 76 B.R. 943, 945 (S.D.N.Y. 1987). The Johnson factors include (1) time and labor required, (2) novelty and difficulty of the questions, (3) skill requisite to perform the legal service properly, (4) customary fee, (5) the amount involved and the results obtained, (6) the experience, reputation and ability of the attorneys, (7) the nature and length of the professional relationship with the client and (8) awards in similar cases. Johnson, 488 F.2d at 717-719.

#### Conclusion

17. Without the Trade Committee's active participation and facilitation, it is unlikely that these Debtors would have emerged from bankruptcy at all much less in August of this year. The Trade Committee helped to create significant value in this case by providing sorely needed post-petition credit, critical input about the financial restructuring of the Debtors which accelerated the Debtors' timely emergence from chapter 11 and by extending approximately \$70 million of new credit on the Effective Date. The Trade Committee played an active and important role in developing the terms of the DIP Facility and the innovative Section 546(g)\* agreements despite the significant risks incurred by individual members of the Trade Committee in doing so. The Trade Committee's focused efforts throughout the strategic business planning process provided the Debtors with the support that was required to develop a viable financial and capital structure for the Debtors despite a relatively minimal return on the Trade Committee members'

pre-petition claims. These actions facilitated the Debtors' ability to successfully reorganize while maximizing the return to all unsecured creditors.

18. The Trade Committee's participation substantially enhanced the progress of reorganization. The Trade Committee's ability to work closely with the Debtors, the DIP Lenders, the Bank Group and the Official Committee enabled plan negotiations to proceed at an accelerated pace. In addition, the Trade Committee's cooperation and support at the plan confirmation stage facilitated the Debtors' efforts to quickly confirm the Plan.

19. Not only has the Trade Committee conferred substantial benefits upon the Debtors and their creditors through its participation and advice, the Trade Committee also has contributed significant benefits to Reorganized Alliance. The Trade Committee's continued insistence that Reorganized Alliance emerge from bankruptcy as a deleveraged company and the Trade Committee's extension of approximately \$70 million of new credit on the Effective Date have substantially increased Reorganized Alliance's chances of success as a viable and profitable business enterprise.

20. The Trade Committee's efforts transcend self-protection and easily satisfy the requirements described in Richton and Hooker Investments. The Trade Committee played a unique and non-duplicative role that conveyed a direct benefit to the estate without serving to deplete the estate's assets. The Trade Committee's role in this case, while concededly advancing its own interests, also furthered the interests of other unsecured creditors and, most particularly, the interests of the Debtors and their new equity holders. The Trade Committee's involvement benefitted almost every party in interest in the case, through consensual resolution, by providing

other creditors with tangible benefits and by helping to ensure that the Debtors would emerge from these proceedings as viable and financially sound as possible.

21. The negotiated resolution of ML&B's fees are indicative of the Trade Committee's substantial contribution to this case under Richton and United States Lines, taking into consideration the complexity of the issues that faced the Trade Committee. Both the Debtors and the Bank Group support ML&B's application for substantial contribution. In addition, the Trade Committee was successful in achieving its dual goals of enabling the Debtors to reorganize while maximizing value to unsecured creditors. ML&B rendered high quality legal work on numerous complex matters, including, inter alia, the DIP Facility, the § 546(g)\* agreements, the plan negotiation process and the deleveraging of the Debtors.

22. The fees of the ML&B also are reasonable under the Johnson factors:

a. The fees requested by ML&B generally reflect the lowest possible rate per hour while utilizing the required expertise to accomplish each specific task.

b. ML&B had a unique familiarity with the creative use of Section 546(g)\* because of its involvement on behalf of official and unofficial trade creditor committees in other similar retail music bankruptcy cases. Moreover, ML&B's willingness to assist the Debtors in creating alternative means of obtaining post-petition credit enabled the Debtors to significantly decrease their pre-petition claims while contemporaneously returning unwanted and unsaleable inventory to 22 of their key trade vendors.

c. ML&B believes that the abilities of all of its professionals and legal assistants involved in this case as well as ML&B's specific expertise in the area of retail and wholesale music bankruptcies and out-of-court restructurings facilitated the negotiation of a

consensual plan, the creative use of § 546(g)\* to minimize pre-petition claims and secure additional post-petition credit, the deleveraging of the Debtors and the extension of new credit without which the Debtors could not have reorganized.

d. The hourly rates charged by each professional and legal assistant in this case represents the rates customarily charged by professionals and legal assistants with similar levels of experience.

e. As stated above, ML&B's unique expertise in the area of retail music reorganizations allowed ML&B to place this case on a fast track while ensuring a consensual plan and a maximum recovery for creditors.

f. ML&B has represented the members of the Trade Committee in other similar cases. The Trade Committee selected ML&B based upon ML&B's history of success and special expertise in chapter 11 and specifically in retail music and home video reorganizations. Given the nature and length of ML&B's professional relationship with the members of the Trade Committee, the Trade Committee determined that ML&B could maximize the Trade Committee's return in a timely manner and, therefore, did not request that ML&B vary its fees.

g. In cases in which ML&B has represented unsecured creditors' committees, ML&B generally has received 100% of its fee requests. However, in this case, the Trade Committee has agreed to limit its request for substantial contribution to \$450,000. Thus, the Trade Committee voluntarily has agreed to reduce its request by \$155,336.53 or approximately 26%.

23. The foregoing reasons support a determination that the Trade Committee has made a substantial contribution to these reorganization proceedings and is entitled to a substantial contribution award in the discounted amount of \$450,000; and



WHEREFORE, the Unofficial Committee of Trade Creditors respectfully requests that this Court enter an Order granting its request for payment of \$450,000 on the grounds that the Unofficial Committee of Trade Creditors has made a substantial contribution to the reorganization of the Debtors.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

/s/ Michael A. Bloom

Michael A. Bloom, Esquire  
Martin J. Murray, Esquire  
Michael Migliaccio, Esquire  
Ashely M. Chan, Esquire  
2000 One Logan Square  
Philadelphia, PA 19103-6993  
101 Park Avenue  
New York, New York 10178-0060  
(212) 309-6000

Attorneys for the Unofficial Committee  
of Secured Trade Vendors

Dated: September 29, 1998

**EXHIBIT A**

**SUMMARY OF PROFESSIONAL AND PARAPROFESSIONAL TIME**

<u>Name</u>	<u>Year Licensed</u>	<u>Total Hours</u>	<u>Hourly Rate</u>	<u>Total Fee</u>
Michael A. Bloom Partner	1974-PA	126.60 807.60	\$455.00 \$445.00	\$57,603.00 \$359,382.00
Michael J. Pedrick Partner	1989-PA	.60	\$270.00	\$162.00
Martin J. Murray Associate	1988-NY	190.00	\$295.00	\$56,050.00
Stephen A. Jannetta Associate	1989-PA	1.00	\$230.00	\$230.00
M. Migliaccio Associate	1996-PA	43.30 131.50 142.50	\$140.00 \$130.00 \$100.00	\$6,062.00 \$17,095.00 \$14,250.00
Scott S. Balber Associate	1995-NY	2.20	\$185.00	\$407.00
A.M. Chan Associate	1997-PA	102.90 153.20 201.60	\$120.00 \$110.00 \$100.00	\$12,348.00 \$16,852.00 \$20,160.00
D. Renken Legal Assistant	N/A	73.60 55.20	\$110.00 \$105.00	\$8,096.00 \$5,796.00
E.L. Robertson Summer Associate	N/A	7.70	\$70.00	\$539.00
Charles M. Calvaruso Legal Assistant	N/A	20.10	\$45.00	\$904.50
M. Pierre Administrator	N/A	6.50	\$38.00	\$247.00
Raymond Garcia Administrator	N/A	3.00	\$38.00	\$114.00
J. Coker Administrator	N/A	1.00	\$38.00	\$38.00

<b>Total Hours By Professionals and Paraprofessionals:</b>	<b>2,070.10</b>
<b>Blended Hourly Rate of Professionals</b>	<b>\$294.60</b>
<b>Total Amount Of Requested Professional and Paraprofessional Fees:</b>	<b>\$576,335.50</b>
<b>Total Amount of Requested Costs</b>	<b>\$29,001.03</b>
<b>TOTAL FEES AND COSTS</b>	<b>\$605,336.53</b>

**EXHIBIT C**

**SUMMARY OF REIMBURSEMENT OF EXPENSES**

Notary Fees	\$6.00
Computer Legal Research	\$1,356.94
Photocopies	\$2,759.96
(a) copies	\$2,658.46
(b) binding	\$80.00
(c) outside copying	\$21.50
Long Distance Telephone Charges	\$2,823.22
Cellular Phone	\$303.58
Long Distance Fax Transmissions	\$3,663.74
Postage	\$70.33
Overnight Charges	\$1095.55
Conference Calls	\$7,589.39
Courier	\$299.85
Overtime Meals	\$20.93
Overtime Transportation	\$25.02
Local Travel	\$241.02
taxi	\$240.02
misc	\$1.00
Business Meals	\$1,821.35
Out of Town Travel	\$6,846.90
Air	\$1,065.00
Rail	\$4,416.01
Hotel	\$875.28
Taxi	\$371.01
Meals	\$118.10
Misc	\$1.50
Filing Fees	\$77.25

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**TOTAL AMOUNT OF DISBURSEMENTS** **\$29,001.03**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re \_\_\_\_\_ : Chapter 11

ALLIANCE ENTERTAINMENT	:	Case Nos. 44673-97 (BRL) through
CORP., et al.	:	44675-97 (BRL) inclusive
	:	(Jointly Administered)
	:	
Debtors.	:	
-----x		

**AFFIDAVIT OF ROBERT M. BAKER, JR.**

STATE OF NEW YORK     )  
    : SS.  
 COUNTY OF NEW YORK   )

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

ROBERT M. BAKER, JR., being duly sworn, deposes and says:

1.     Background

I am Vice President of PolyGram Group Distribution, Inc. (“PolyGram”) and responsible for directing and implementing PolyGram’s national credit policies. Since the inception of these bankruptcy cases, I have served as Chairperson of the Unofficial Committee of Trade Creditors of Alliance Entertainment Corp. (the “Trade Committee”). I make this affidavit in support of the Motion of the Unofficial Committee of Trade Creditors for Payment of a Substantial Contribution Claim Pursuant to Sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code.

2.     Substantial Contribution of the Trade Committee

The Trade Committee, composed of experienced and sophisticated professionals in the retail music and home video industry, has played an active role in these proceedings and helped the progression of these cases in numerous ways.

a.     Trade Committee’s Active Participation

i. During the course of these proceedings, the Trade Committee convened more than 21 separate meetings or conference calls to discuss the status of the Debtors' cases and review appropriate strategies. ML&B actively participated in 23 hearings held before this Court on various matters. I personally attended and observed many of these hearings. The Trade Committee participated in 22 separate meetings or conference calls with the Debtors, the Bank Group and the Official Committee.

b. Financial Expertise and Input of the Trade Committee

i. The Trade Committee actively participated in the negotiations concerning the terms and conditions of the DIP Facility. The Trade Committee reviewed the terms and conditions of the DIP Facility and provided suggested revisions thereto. Moreover, at a point in the proceedings where the outcome was far from certain, the members of the Trade Committee were asked to and did incur significant risk in supporting the proposed DIP Facility because members of the Trade Committee were required to subordinate their existing liens on the Debtors' assets to both the DIP Lenders who were granted a priming first priority lien in all of the Debtors' existing and after-acquired assets under the terms of the DIP Facility and to the Pre-Petition Lenders who were granted a second priority lien in all of Debtors' existing and after-acquired assets.

ii. Following the enactment of the Bankruptcy Reform Act of 1994, Debtors' bankruptcy was the first case in which a so-called "one-stop" (or wholesale distributor) in the pre-recorded music industry would successfully emerge from bankruptcy and only the second case in which individual consents to enter into a section 546(g)\* return program ultimately were obtained

from **all six members** of the Trade Committee.<sup>3/</sup> The Trade Committee was instrumental in developing the prototype section 546(g)\* template agreement. This agreement enabled the Debtors to obtain post-petition credit from each of the six Trade Committee members in exchange for the Debtors' ability to make returns of products which the Debtors did not want and could not sell. Moreover, as discussed above, individual members of the Trade Committee incurred significant risk by participating in the section 546(g)\* program because the Trade Committee's liens were subordinated to the liens of both the DIP Lenders and Pre-Petition Lenders. In total, 22 trade vendors executed section 546(g)\* agreements with the Debtors based upon the prototype section 546(g)\* agreement which the Debtors developed with the Trade Committee. The section 546(g)\* program provided Debtors with approximately \$35 million of incremental post-petition credit. Without the Trade Committee's assumption of the lead role in developing the prototype section 546(g)\* agreement with the Pre-Petition Lenders, the DIP Lenders and the Debtors, these transactions would not have been consummated and significant and sorely needed, incremental post-petition credit would not have been made available.

iii. The Trade Committee actively participated in the selection and retention of the Debtors' financial advisors - first, Salomon Brothers, Inc. (now Salomon Smith Barney) and then, The Blackstone Group, L.P., by thoroughly reviewing potential candidates and thereafter suggesting revisions to their respective proposed retention agreements.

iv. The Trade Committee also participated in the development of the Debtors' business plan and provided valuable insight into the operation of the Debtors' core businesses based upon the Trade Committee's own distribution experiences, including advice regarding the

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<sup>3/</sup>By way of contrast, in the Wherehouse Entertainment, Inc. chapter 11 proceeding (U.S. Bankruptcy Court, D. of Delaware), only three of the six "majors" participated in the considerably less risky section 546(g)\* program developed in that case.

timing of implementation of the Debtors' warehouse automation program at its Coral Springs, Florida facility. In addition, the Trade Committee worked closely with both the Bank Group and their advisors and the Debtors and their advisors in developing the construct of a viable financial and capital structure of the Debtors under the Plan.

v. Although the Trade Committee itself derived limited benefit under the Plan, the Trade Committee provided invaluable support for the Plan and was instrumental in resolving the Official Committee's Objections to the Plan. After the Official Committee had filed its Objections to the Plan, through our counsel, the Trade Committee initiated various discussions with and between the Debtors, the Bank Group and the Official Committee in an effort to resolve the Official Committee's objections. In addition, Trade Committee counsel suggested that a settlement conference be held with the Bankruptcy Court to attempt to resolve the Official Committee's Objections. On July 6, 1998, such a settlement conference was convened and laid the groundwork for the conclusion of successful plan negotiations in these cases. Despite the Trade Committee's various contributions towards the development and confirmation of the Plan, the Trade Committee members ultimately agreed to receive a distribution of only 4.9% of its total pre-petition claims,<sup>4/</sup> or \$5 million, under the Plan.

vi. When the Debtors determined to sell Red Ant, the Trade Committee actively participated in the sale negotiations and was helpful in obtaining the highest price for Red Ant. When an unacceptably low purchase offer was submitted for Red Ant, both the Official Committee and the Trade Committee filed objections to the proposed sale. As a result of these objections, Debtors ultimately received a significantly higher sale price for Red Ant.

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<sup>4/</sup>Exclusive of credits obtained pursuant to the section 546(g)\* program.



vii. The Trade Committee worked diligently throughout the bankruptcy case to ensure that Reorganized Alliance would emerge from bankruptcy with as little debt as possible. After lengthy discussions between the Trade Committee and the Bank Group and its advisors, the members of the Bank Group ultimately agreed to convert their debt to equity in order to increase the Debtors' ability to successfully reorganize. As a result, Reorganized Alliance has emerged from chapter 11 as a wholly deleveraged company except for its new working capital facility. The long-term benefit of the Trade Committee's insistence on a deleveraged Reorganized Alliance cannot be overstated.

viii. From the outset of this case, the Trade Committee recognized that the Debtors' Board of Directors lacked independent outside directors. In order to ensure the Debtors' successful emergence from bankruptcy, the Trade Committee worked closely with counsel for the Official Committee in insisting upon the appointment of independent directors to Alliance's Board of Directors. As a result of these combined efforts and with the support of the Bank Group, Alliance's Board of Directors appointed three independent outside directors, who have served the Debtors through and including the Effective Date.

ix. The Trade Committee supported and facilitated the Debtors' efforts to liquidate INDI and to sell each of Castle Communications (US), Inc. and Concord Records, Inc. Because the Trade Committee understood the importance of efficiently disposing of the Debtors' non-core businesses, the Trade Committee monitored and assisted the Debtors in disposing of these assets. The Trade Committee's efforts transcended self-protection because these efforts only benefitted the Pre-Petition Lenders who would be recipients of the proceeds and Reorganized Alliance which would be better able to streamline and consolidate its remaining businesses.

c. Trade Committee's Beneficial Impact on Other Creditor Constituencies

The key to development of a consensual plan which would permit the Debtors to emerge from chapter 11 as a viable entity in these cases was the conceptualization, development and negotiation of the Customary Trade Terms Commitment (the "Commitment Letter") and the related Bank Group Term Sheet (the "Term Sheet"). In consideration of members of the Bank Group converting their debt to equity, members of the Trade Committee agreed to extend approximately \$70 million of new credit to Reorganized Alliance on the Effective Date. Under the terms of the Commitment Letter, as of the Effective Date, the Trade Committee committed to sell goods to Reorganized Alliance on normal and customary trade terms, including reinstatement of any prompt payment discounts. In addition, the Bank Group requested that the Trade Committee limit its request for fees and expenses based on the Trade Committee's substantial contribution to the Debtors' bankruptcy cases to \$450,000.

3. Trade Committee's Request for Compensation for its Substantial Contribution to the Case

a. Based on the above reasons, the Trade Committee believes that it has made a substantial contribution to the success of this case because of its unique role as a well-informed, substantive contributor to numerous and complex legal and financial matters facing the Debtors, as a facilitator of consensual resolutions among diametrically opposed creditor constituencies and as an intentional benefactor of other creditor constituencies. The Trade Committee's contributions were not duplicative of efforts of any other party to this case. In fact, such efforts concurrently ensured that the financial structure of Reorganized Alliance would be sound and permit Reorganized Alliance to survive successfully in the highly competitive retail music industry. In short, the Trade Committee's efforts enabled the bankruptcy proceedings to move

toward confirmation of a consensual plan - a result which would have been far less certain if the Trade Committee had not participated actively in the reorganization.

b. The Trade Committee has incurred \$576,335.50 in legal fees and \$29,001.03 in expenses of its counsel, Morgan, Lewis & Bockius LLP (“ML&B”). True and correct summaries of bills from ML&B are attached to the Motion and incorporated therein as Exhibits “A” & “C”.

Robert M. Baker, Jr. /s/ \_\_\_\_\_  
Robert M. Baker, Jr.

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Notary Public

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X

In re : Chapter 11  
 : Case Nos. 44673-97 (BRL) through  
 ALLIANCE ENTERTAINMENT : 44675-97 (BRL) inclusive  
 CORP., et al. : (Jointly Administered)  
 :  
 Debtors. :  
 -----X

**AFFIDAVIT OF ERIC WEISMAN**

STATE OF FLORIDA )  
 : SS.  
 COUNTY OF PALM BEACH )

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

ERIC WEISMAN, being duly sworn, deposes and says:

1. **Background**

I am President and Chief Executive Officer of Alliance Entertainment Corp. and I actively participated in the Debtors’ reorganization proceedings. I make this affidavit in support of the Motion of the Unofficial Committee of Trade Creditors for Payment of a Substantial Contribution Claim Pursuant to Sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code.

2. **Substantial Contribution of the Trade Committee**

a. The Trade Committee helped to create value in this case by providing post-petition credit, input about the financial restructuring of the Debtors and by extending approximately \$70 million of new credit on the Effective Date. The Trade Committee played an active and important role in developing the terms of the DIP Facility and the Section 546(g)\* agreements. The Trade Committee’s efforts helped to develop a viable financial and capital structure for the Debtors. In addition, the Trade Committee’s general cooperation and support at the plan confirmation stage facilitated the Debtors’ efforts to quickly confirm the Plan.

b. The Trade Committee also has contributed significant benefits to Reorganized Alliance. The Trade Committee's continued insistence that Reorganized Alliance emerge from bankruptcy as a deleveraged company and the Trade Committee's extension of approximately \$70 million of new credit on the Effective Date have substantially aided Reorganized Alliance.

c. The Trade Committee played a unique and non-duplicative role that conveyed a direct benefit to the estate. The Trade Committee's role in this case, while concededly advancing its own interests, also furthered the interests of other unsecured creditors, the Debtors and their new equity holders.

3. Trade Committee's Request for Compensation for its Substantial Contribution to the Case

Based on the above reasons, Debtors believe that the Trade Committee has made a substantial contribution to the success of this case and support the Trade Committee's Application.

Eric Weisman /s/  
Eric Weisman

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_  
Notary Public

Martin J. Murray (MM-5103)  
MORGAN, LEWIS & BOCKIUS LLP  
Attorneys for the Unofficial Committee  
of Secured Trade Vendors

101 Park Avenue  
New York, New York 10178-0060  
(212) 309-6000

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

HEARING DATE: October 28, 1998  
HEARING TIME: 10:00 a.m.

-----X  
In re : Chapter 11  
: Case Nos. 44673-97 (BRL) through  
ALLIANCE ENTERTAINMENT : 44675-97 (BRL) inclusive  
CORP., et al. : (Jointly Administered)  
:   
Debtors. :   
-----X

**ORDER APPROVING MOTION OF THE UNOFFICIAL COMMITTEE OF  
SECURED TRADE VENDORS FOR AN ORDER APPROVING PAYMENT  
OF SUBSTANTIAL CONTRIBUTION CLAIM PURSUANT  
TO SECTIONS 503(b)(3)(D) AND 503(b)(4) OF THE BANKRUPTCY CODE**

Upon the motion, dated September 29, 1998 (the "Motion"), of the Unofficial Committee of Secured Trade Vendors (the "Unofficial Committee"), for an order pursuant to sections 503(b)(3)(D) and 503(b)(4) of the United States Bankruptcy Code; and upon the affidavit of service filed in connection with the Motion; and after consideration of the Motion, the record of the hearing on the Motion and full record of these cases; and after due deliberation and sufficient cause appearing therefor, it is

FOUND THAT: Due and sufficient notice of the Motion has been provided; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

The Motion is granted and the Unofficial Committee should be paid \$450,000 based on its substantial contribution to the reorganization of the Debtors.

Dated: New York, New York

October \_\_, 1998

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UNITED STATES BANKRUPTCY JUDGE