

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

In re)	
)	Chapter 11
ALLIANCE ENTERTAINMENT)	Case No. 97 B 44673 (BRL)
CORP., <u>et al.</u> ,)	(Jointly Administered)
Debtors.)	
)	
)	
)	

APPLICATION OF WILLKIE FARR & GALLAGHER,
AS ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION,
FOR FINAL ALLOWANCE OF COMPENSATION FOR SERVICES
RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED
FROM JULY 14, 1997 THROUGH AUGUST 19, 1998, INCLUSIVE

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

Willkie Farr & Gallagher ("WF&G"), attorneys for the above-captioned debtors and reorganized debtors (collectively, the "Debtors"), as and for its application (the "Application") for final allowance, in these cases other than the case of Concord Records, Inc., of compensation for professional services rendered and reimbursement of expenses incurred from July 14, 1997 through August 19, 1998, inclusive (the "Application Period"), respectfully represents:

INTRODUCTION

I. From the date they filed for chapter 11 protection through the date the Debtors emerged, the Debtors expended great efforts to preserve and maximize the value of their estates for the common benefit of creditors and employees alike. Upon the

Debtors' determination that reorganizing and continuing as a going concern would yield the greatest value to their creditors and preserve the vast preponderance of the jobs held by their approximately 800 employees, the Debtors concentrated their efforts and resources on expeditiously refocusing their operations around the core one-stop music distribution group and divesting their interests in non-core businesses.

II. Initially, the Debtors' and their professionals' time and effort was spent restructuring the Debtors' operations. Indeed, within the first six months of the chapter 11 process, the Debtors developed and presented their long range business plan (the "LRBP") which they anticipated would support a new capital structure to be implemented through equity sponsorship or a stand-alone plan of reorganization. During the winter of 1997 and the first quarter of 1998, the Debtors began to formulate, draft and negotiate the plan of reorganization.

III. By order dated July 30, 1998 (the "Confirmation Order"), this Court confirmed the Third Amended Joint Plan of Reorganization (the "Plan"). The Plan was consummated on August 20, 1998.

IV. Considering the complexity of issues involved in these cases, the costs of administering these cases compare most favorably to the results achieved, in large part because the principal constituencies involved were essentially able to work together harmoniously in a cooperative environment free from

time-consuming, costly and vexatious litigation. As demonstrated below, WF&G's perseverance, professional judgment and know-how, and dedication are responsible for a large measure of this success story.

V. In conjunction with the Debtors' management and other retained professionals, WF&G has performed each of the tasks described herein within every deadline imposed by this Court or requested by the Debtors' constituencies. WF&G's requested final allowance of compensation for services rendered and reimbursement for expenses incurred for the Application Period reflects the time, skill and effort expended toward the goals of: (a) efficiently administering the Debtors' chapter 11 cases; (b) ensuring that maximum value for the Debtors' assets was received as a result of the Debtors' divestiture of non-core assets; and (c) swiftly proposing and confirming the consensual Plan in these cases.

BACKGROUND

VI. On July 14, 1997 (the "Petition Date"), Alliance Entertainment Corp. ("Alliance") and fourteen of its direct and indirect subsidiaries filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continued in the possession of their respective properties and in the management and operation of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. These chapter 11

cases have been consolidated for procedural purposes only and are being jointly administered pursuant to an order of this Court.

VII.No trustee or examiner was appointed herein. On July 23, 1997, the United States Trustee for the Southern District of New York (the "United States Trustee") appointed an official committee of the Debtors' unsecured creditors (the "Creditors' Committee") in these chapter 11 cases. An unofficial committee of Alliance's secured trade vendors (the "Trade Committee") also was formed and was active in these cases. The Chase Manhattan Bank, as Agent Bank for the Debtors' prepetition secured bank lenders (the "Prepetition Lenders") and the lenders under the Debtors' debtor in possession financing facility (the "DIP Lenders"), also has played an active role in these cases.

VIII.As of the Petition Date, the Debtors were fully integrated independent music companies which created, marketed and distributed their proprietary content rights, which consisted of both new artist and catalog product in several genres. Upon emergence from chapter 11, the Debtors are the largest domestic full service distributor of pre-recorded music and music-related products, operating through traditional as well as emerging retail channels.

IX.This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334, the "Standing Order of Referral of Cases to Bankruptcy Judges," dated July 10, 1984, of District Court Judge Robert T. Ward, Article XIII of the Plan and

paragraph 20 of the Confirmation Order. Venue of these cases and this Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

PRIOR INTERIM AWARDS

X. By orders dated December 24, 1997, April 6, 1998, July 6, 1998 and July 14, 1998, this Court has approved \$1,510,630.50 of the fees and \$221,482.75 of the expenses requested by WF&G pursuant to its first through third applications for interim allowances of compensation rendered and reimbursements of expenses incurred in these cases, representing: (a) \$399,232.00 of the fees and \$48,942.75 of the expenses requested for the third interim period; (b) \$374,979.50 of the fees and \$32,828.56 of the expenses requested for the second interim period; and (g) \$736,419.00 of the fees and \$139,711.44 of the expenses requested for the first interim period (together with the second, and third, the "Interim Periods").¹

THE APPLICATION

XI. By this Application, and pursuant to section 330 of the Bankruptcy Code and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), WF&G requests that this Court authorize a final allowance of: (a) compensation for professional services WF&G rendered for the Debtors during the Application Period in the amount of \$2,252,878.00, including the

¹ Final payment of such fees remains subject to a 20% holdback

period from May 1, 1998 through August 19, 1998 (the "Uncompensated Period"), in the amount of \$742,247.50; and (b) the reimbursement of actual and necessary expenses WF&G incurred in connection with the rendition of such professional services in the amount of \$297,740.39 (together, the "Final Allowance"). Of the Final Allowance, the sum of \$1,208,504.40 already has been awarded and paid as interim compensation and the sum of \$221,482.75 already has been awarded and paid as interim reimbursement of expenses, leaving a net amount of unpaid compensation in the sum of \$1,044,373.60 and a net amount of unpaid expenses in the sum of \$76,257.64.

XII. This request for a Final Allowance includes the unpaid portion of professional fees for services rendered by WF&G during the Interim Periods (which amount is \$302,126.10) relating to holdbacks ordered by the Court. It also reflects: (a) compensation for services rendered and reimbursement of expenses incurred during the Uncompensated Period in the respective amounts of \$742,247.50 and \$76,257.64.

XIII. The Final Allowance also reflects, and does not include, an aggregate voluntary reduction of \$71,816.73 in fees for services rendered and reimbursement of expenses incurred by WF&G. This voluntary reduction is primarily comprised of: (a) time rendered by certain WF&G staff who did not ordinarily work on the Debtors' cases and performed minimal services for the Debtors, (b) time voluntarily written off by WF&G during the

Interim Periods because the work performed primarily was administrative in nature; and (c) word processing time not included in WF&G's overhead which WF&G nevertheless determined not to charge to the Debtors' estates.

XIV. The professional services and related expenses for which WF&G requests a final allowance of compensation and reimbursement of expenses were rendered and incurred in connection with these cases and in discharge of WF&G's professional responsibilities as attorneys for the Debtors in their chapter 11 cases. WF&G's services were substantial, necessary, and beneficial to the Debtors and their estates, creditors, and other parties in interest. The variety and complexity of the issues involved in these cases and the need to act or respond on an expedited basis to those issues have required WF&G attorneys to expend substantial time on a daily basis, and often required night and/or weekend work.

XV. Throughout the Application Period, WF&G contributed to the efficient administration of these cases. WF&G worked tirelessly to seek to resolve all disputes consensually without the need for judicial intervention. In addition, WF&G actively sought to maintain an efficient working relationship with Court personnel and the Clerk's office, and a positive working relationship with the various professionals acting in these cases.

XVI.WF&G has received no payment or promise of payment for the services rendered in, or in anticipation of, these cases other than: (a) the \$375,000.00 retainer disclosed at the time of WF&G's retention; and (b) \$1,208,504.40 of fees, pursuant to the Court's awards for the Interim Periods. No agreement or understanding exists between WF&G and any other entity for the sharing of compensation to be received for services in or in connection with these cases. See Affidavit of Matthew A. Feldman, Esq., pursuant to section 504 of the Bankruptcy Code and Bankruptcy Rule 2016, annexed hereto as Exhibit "A."

XVII.WF&G maintains written records of the time expended by attorneys and paraprofessionals in rendering professional services to the Debtors. Such time records are made contemporaneously with the rendition of services by the person rendering such services. Copies of the appropriate records for the Interim Periods have been annexed to each interim fee application for the relevant Interim Period, and such applications and records collectively are incorporated herein by reference. Copies of the daily time records for the Uncompensated Period, broken down by matter, listing the name of the attorney or paraprofessional, the date on which the services were performed, and the amount of time spent in performing the services, is annexed hereto as Exhibit "B."

XVIII.For the convenience of the Court and parties-in-interest, annexed hereto as Exhibit "C" is a list of the

attorneys and paraprofessionals who have worked on those matters during the Uncompensated Period, the aggregate time expended by each individual during the Uncompensated Period, his or her blended hourly billing rate during the Uncompensated Period, and the amount of WF&G's fees attributable to each individual.

XIX.WF&G also maintains records of all actual and necessary out-of-pocket expenses incurred in connection with the rendition of professional services. A schedule setting forth the categories of expenses and amounts for which reimbursement is requested for the Uncompensated Period is annexed hereto as Exhibit "D." Once again, schedules with similar information for each Interim Period were annexed to prior interim fee applications and collectively are incorporated herein by reference.

XX.All expenses billed in connection with these cases were billed in compliance with the Local Rules of this Court, as modified by this Court's Order Establishing Administrative Procedures in the Debtors' Chapter 11 Cases, dated August 13, 1997 (the "August 13, 1997 Order"), and as set forth in the Certified Statement of Matthew A. Feldman, Esq., annexed hereto as Exhibit "E."

ALLOCATION OF SERVICES TO THE DEBTORS

XXI.WF&G worked diligently to assure an appropriate division of labor among the various professionals representing the Debtors to minimize and, in most instances, eliminate

duplication of effort and to efficiently move these cases forward. Every effort was made to isolate discrete tasks that may best have been handled by corporate counsel and special counsel retained in these cases. WF&G believes the division of labor among the professionals was careful and appropriate, and the Debtors were well served by the varied expertise brought to bear by their counsel of choice.

XXII. Pursuant to the Administrative Order Re: Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, dated June 20, 1991 (the "Administrative Order"), WF&G recorded its services rendered and disbursements incurred by different matters reasonably expected by the Debtors to continue over a period of at least three months and to constitute a substantial portion of the fees sought during an application period.

OVERVIEW OF THE CASE

XXIII. Much of WF&G's work in the early stages of these cases involved case administration and the implementation of the Debtors' restructuring strategy. The LRBP addressed every aspect of the Debtors' operations (including their competitive standing, merchandising strategies, marketing and advertising, planned expense reductions, logistic and distribution operations, human resources, expansion strategy and financial projections), was a blueprint for the Debtors' future operations, and set forth management's effort to improve sales and margins. Early on,

procedures were established, additional professionals were retained (as necessary), and sales and settlements were approved by this Court.

XXIV.The second stage of the Debtors' cases required the Debtors and their professionals to simultaneously pursue alternative courses of action (a stand-alone plan versus equity sponsorship), while the Debtors analyzed which reorganizational structure would yield the greatest and most certain value.

XXV.The Debtors' cases now are in their final stage. The Plan has been negotiated, confirmed and consummated and the Debtors' reorganized successors are operating as a going concern.

XXVI.Throughout these cases, the Debtors and WF&G kept the Debtors' major creditor constituencies informed of, and involved in, both the Debtors' attempts to reorganize around the core distribution group and divest themselves of non-core businesses and procedures relating to both were discussed with respective counsels to such constituencies in advance of implementation and/or submission to the Court.

XXVII.The Plan was confirmed on July 30, 1998 and became effective, merely three weeks later, on August 20, 1998. Pursuant to the Plan, holders of allowed administrative, priority and secured claims have been or will be paid in full in cash, stock and/or notes as the case may be. In addition, distributions of stock, warrants and litigation trust certificates have been or shall be made to the Litigation Trust.

SUMMARY OF SERVICES RENDERED

XXVIII. Recitation of each and every item of professional services that WF&G performed during the Application Period would unduly burden the Court. Hence, the following summary highlights the major areas in which services were rendered, with particular emphasis on the Uncompensated Period. (Summaries of other services performed are set forth in detail in the first through third interim fee applications on file with the Court.) The full breadth of WF&G's services are reflected in WF&G's time records as annexed hereto or previously filed with the Court. A schedule of the matter numbers indicating the aggregate fees billed to each matter during the Application Period is annexed hereto as Exhibit "F."

A. The Plan and Disclosure Statement.

1. The Uncompensated Period.

XXIX.As the Debtors' ability to successfully conduct business as a going concern depends upon the continued cooperation of the Majors, the Debtors, with the assistance of WF&G, brokered an agreement between the Prepetition Lenders and the Majors that formed the cornerstone of this reorganization. As part of such agreement, the Debtors obtained a commitment from the Majors to extend in excess of \$70 million of post emergence trade credit.

XXX.The Debtors expeditiously sought to finalize negotiations regarding a consensual plan of reorganization which provided for the distribution of value in accordance with the agreement between the Prepetition Lenders and the Majors. During the Uncompensated Period, the Debtors finalized the terms of the Plan and filed amended versions thereof (along with the related disclosure statement (the "Disclosure Statement"), on May 20, 1998, June 19, 1998, and June 25, 1998. This Court approved, over the objection of the Creditors' Committee, the adequacy of the information contained in the Disclosure Statement by order dated June 25, 1998.

XXXI.After approval of the Disclosure Statement, but prior to confirmation of the Plan, WF&G, along with all of the professionals retained in these cases, worked tirelessly to reach

a consensus with the Creditors' Committee in order to achieve a truly consensual plan of reorganization. This diligent effort resulted in the Plan being confirmed on July 30, 1998, with the support of all significant creditor constituencies in these cases, including the Creditors' Committee.

XXXII. With respect to Plan and disclosure issues, WF&G researched, drafted and filed comprehensive memoranda of law in support of the Plan and Disclosure Statement and in response to specific objections filed, including a vigorous objection to the approval of the Disclosure Statement filed by the Creditors' Committee. To the extent not otherwise resolved between the parties, this Court overruled all of the objections to the Plan and Disclosure Statement. During the Uncompensated Period, WF&G also prepared and supervised the service of both a mailing and publication notice in connection in connection with the hearing on confirmation of the Plan. Finally, WF&G also represented the Debtors at the hearing to consider approval of the Debtors' proposed voting procedures, which were developed by WF&G and approved (as modified) at the June 25, 1998 hearing on the Disclosure Statement.

2. The Interim Periods.

XXXIII. During the Interim Periods leading up to the Uncompensated Period, WF&G, among other things:

- ◆ Counseled the Debtors regarding their LRBP.
- ◆ Held extensive discussions, meetings, conferences and negotiating sessions with the Prepetition

Lenders, the Majors and the Creditors' Committee, and their respective professionals, to review the LRBP, and to resolve any related legal issues.

- ◆ Prepared four motions to extend the Debtors' exclusive periods in which to file a plan of reorganization and to solicit acceptances to that plan. Indicative of the consensual plan process which the Debtors pursued, these motions generally were brought after consultation with, and the consent of all of the significant creditor constituencies in these cases. Indeed, none of the requests for such extensions were opposed.

- ◆ Formulated a stand-alone plan while simultaneously pursuing equity sponsorship to maintain a level playing field with potential equity sponsors and position the Debtors to emerge on a stand-alone basis in the event, as did occur, that such a plan would yield greater value than one involving an equity sponsorship.

B. The Sale of Castle Communications.

1. The Uncompensated Period.

XXXIV. The Debtors retained The Blackstone Group ("Blackstone") to market for potential sale Castle Communications ("Castle"). On April 23, 1998, based upon a comprehensive motion prepared by WF&G, the Debtors sought approval to conduct an auction before the Court to sell all of their interests in Castle. WF&G was instrumental in developing the sale procedures and strategies to be used in the auction process. In addition, WF&G worked closely with the Debtors and Blackstone regarding the marketing and potential sale of Castle.

XXXV. On May 21, 1998, through eleventh hour negotiations, the Debtors, Blackstone and WF&G, WF&G was able to present to the Court a proposal to purchase Castle made by Rutland Trust Plc. ("Rutland"). At the auction, several prospective bidders represented that, with additional time, such bidders anticipated being able to submit higher or otherwise better offers for Castle than the offer submitted by Rutland. Due in part to these bidder's representations and reservations expressed by the Creditors' Committee, the Debtors requested and the Court granted an adjournment of the auction. Furthermore, the Court authorized the Debtors to grant bidding protections to Rutland to further advance the auction process.

XXXVI. Over a period of approximately thirty days, the Debtors, Blackstone and WF&G continued to negotiate and market

Castle. On June 25, 1998, the Court approved the sale of Castle to Rutland. The sale of Castle to Rutland closed in July 1998.

2. The Interim Periods.

XXXVII. Beginning prior to the Petition Date, the sale of Castle required WF&G to bring to bear its various legal expertise in, among other things:

- ◆ Strategic determinations as to whether Castle should file for protection as a chapter 11 debtor.
- ◆ After determining that filing Castle as a chapter 11 debtor would have adverse consequences to the Debtors due to cross border insolvency issues, determining the best method to preserve the value of Castle for the benefit of all creditors.
- ◆ Negotiating the standstill agreement with the Prepetition Lenders.
- ◆ Assisting with the injunction against the bondholders.
- ◆ Advising the Alliance Board of Directors and management with respect to the potential sale of Castle.
- ◆ Communicating with counsels to the various major creditor constituencies as to the progress of the ongoing marketing effort of Castle.
- ◆ Developing the auction procedures.

C. GECC Exit Financing.

1. The Uncompensated Period.

XXXVIII. As part of the Debtors' plan for reorganizing, the Debtors needed to obtain exit financing in order to emerge from chapter 11. With the assistance and advice of WF&G as well as their other professionals, the Debtors explored various

financing alternatives. After a diligent effort, the Debtors ultimately entered into an agreement with the General Electric Capital Corp. ("GECC") to provide a \$75 million asset based financing facility.

XXXIX. Upon confirmation of the Plan, WF&G immediately began the process of negotiation and documentation of the GECC financing facility. In merely three weeks, the GECC financing facility was in place, permitting the Debtors to expeditiously emerge from chapter 11.

D. Other Services Performed Throughout the Administration of these Cases

XL. The following summary highlights the major areas to which WF&G devoted substantive time and attention during the Interim Periods. The full breadth of WF&G's services are reflected in WF&G's time records.

1. Case Administration. WF&G contributed significantly to the efficient administration of these cases. WF&G also worked tirelessly to seek to resolve all disputes consensually without the need for judicial intervention. In addition, WF&G actively sought to establish an efficient working relationship with Court personnel and the Clerk's office, and to develop a positive working relationship with the Creditors' Committee, the Unofficial Committee, the Prepetition Lenders and the DIP Lenders and their professionals, leading to the expeditious and consensual resolution of many issues that have arisen in these cases. WF&G also had great success as counsel to the first "mega" case to file electronically with the Bankruptcy Court. This process required WF&G to interface with Court personnel on many levels, and spend additional time dealing with issues relating to the electronic filing system. Numerous meetings with each of the important constituents or their professionals were held, and a substantial volume of data and documents were supplied to them on a regular and ongoing basis. WF&G also

assisted in responding to the dozens of inquiries from vendors, secured creditors, and other parties in interest regarding particular problems and issues which are confronting them. WF&G also assisted the Debtors in filing all required monthly operating reports.

2. **Dip Facility.** The Debtors' establishment of debtor in possession financing was a critical source of liquidity and an important first step in the Debtors' efforts to reorganize. Toward this end, WF&G spearheaded the effort to obtain approval of the \$50 million debtor in possession financing facility from a number of financial institutions with The Chase Manhattan Bank acting as agent. Those efforts entailed extensive negotiations among the Debtors, The Chase Manhattan Bank, the Unofficial Committee, the United States Trustee's Office and, ultimately, the Creditors' Committee. By orders, dated April 1, 1998, and April 21, 1998, the Court authorized a number of modifications to the Dip Facility negotiated by the Debtors with the assistance of WF&G (the "Dip Amendment").

3. **Stabilizing Operations.** The Debtors' management directed enormous efforts to stabilizing operations, affirmatively reaching out to the vendor community to reestablish, or in some cases establish, terms for the supply of critical resources and inventory. At the same time, the Debtors, with the assistance and advice of WF&G, effectively addressed the many emergencies and other matters which occur at the commencement of a complex chapter 11 case, including responding to a multitude of inquiries by vendors, suppliers, employees, the members of the Unofficial Committee, noteholders, creditors, landlords, the Creditors' Committee and its professionals and others, and responding promptly to actions taken in violation of the automatic stay that threatened the Debtors and their businesses.

4. **Sale of Other Assets.** The Debtors determined that they required the services of a financial advisor for the purpose of, among other things, assisting them in evaluating whether to retain or sell their various non-core businesses including Castle Communications Plc. ("Castle") and Concord Records, Inc. ("Concord"). The Debtors, with the assistance of Salomon Brothers, Inc. ("Salomon Brothers") and later The Blackstone Group LP ("Blackstone"), prepared an offering memoranda and data

rooms and solicited bids for Castle and Concord. In connection therewith, WF&G assisted the Debtors in retaining Salomon Brothers and Blackstone as financial advisors and investment bankers and has been instrumental in developing sale/auction strategies.

5. **Merchandise Return Program.** WF&G investigated merchandise return programs established by other music debtors in bankruptcy cases. Upon completion of its investigation, WF&G presented and discussed possible alternatives with the Debtors. WF&G then assisted the Debtors in entering into 546(g)* agreements with all of the six major vendors who comprise the Unofficial Committee. Moreover, WF&G also assisted the Debtors in executing 546(g)* agreements with important independent labels. Under this program, the Debtors were able to balance and upgrade their inventory by returning goods that were obsolete, returned to them by retailers, slow to sell or nonconforming. Under these agreements, the Debtors were able to return such goods to the affected vendor who received a dollar for dollar (at cost) reduction in its prepetition claims in exchange for an equal amount of postpetition credit from the vendor to the Debtors.

6. **Standstill with Prepetition Lenders.** Prior to the Petition Date, each of the Debtors' subsidiaries organized in United Kingdom (the "UK Entities") guaranteed the Debtors' obligations to their Prepetition Lenders. Further, in July 1995, the UK Entities acted as guarantors on \$125,000,000 of 11.25% Senior Subordinated Notes due 2005 issued by Alliance (the "Notes"). Prior to or immediately after the Petition Date, WF&G sought, on behalf of the Debtors, negotiated and obtained a standstill agreement with the Prepetition Lenders. The Debtors determined that due to a lack of a cohesive, organized group and inadequate time, they would be unable to obtain a standstill agreement with the holders of the Notes (the "Noteholders") or the indenture trustee for the Notes (the "Trustee"). WF&G coordinated its efforts with Special Litigation Counsel in connection with a temporary restraining order and preliminary injunction restraining the Noteholders and the Trustee from taking any action to collect on the Notes. The preliminary injunction enabled the Debtors to effectively stabilize and begin the process of evaluating and ultimately marketing Castle for sale, thus preserving the value of the asset.

7. **Extension of Time to Assume or Reject Leases.** From time to time, the Court entered orders based on motions prepared by WF&G extending the time by which the Debtors had to assume their unexpired leases of nonresidential real property. As set forth in the respective orders, landlords were permitted to object to the order and seek to shorten the Debtors' time to assume or reject the subject leases. Of the twenty-nine leases impacted by this order, only one landlord filed an objection to the order. WF&G negotiated with the landlord and ultimately was able to reach an agreement with respect to that lease.
8. **Sale of Red Ant.** On August 6, 1997, the Debtors moved to schedule a hearing to sell substantially all of their equity interest in Red Ant to Wasserstein Perella & Co., Inc. The Court scheduled an auction on August 13, 1997, and after holding the auction with Wasserstein and another potential purchaser, on August 15, 1997, this Court entered an order approving the sale of 90% of the stock of Red Ant to Wasserstein Perella & Co. for approximately \$1 million in cash and notes. WF&G acted swiftly to preserve as much value as possible for the Red Ant entities, and played an important role in structuring the auction and ultimately assisting the Debtors with the sale of Red Ant.
9. **Utility Deposits.** Pursuant to a so-called "first day" order, the Debtors received objections from approximately twenty (20) utilities seeking deposits or other forms of adequate assurance. Again, WF&G, working on behalf of the Debtors, has been able to negotiate consensual resolutions of all of the objections, and on the Debtors' behalf, enter into stipulations providing the utilities with creative forms of payment assurance, including notice deadlines, shortened payment periods and certain de minimus deposits.
10. **Reclamation.** WF&G assisted the Debtors in investigating the merits of reclamation demands which the Debtors received immediately prior to, and just after, the Petition Date. In that regard, WF&G reviewed procedures established in unrelated chapter 11 cases to resolve reclamation claims and provided the Debtors with comprehensive analyses concerning the Debtors' rights and obligations. Further, WF&G made recommendations to the Debtors with respect to methodology for resolving such claims.

11. **Retentions.** WF&G assisted the Debtors in retaining and monitoring the numerous professionals utilized by the Debtors during these cases and in the ordinary course of their business. WF&G has coordinated the information flow to and among these professionals, and has endeavored to ensure that such professionals comply with this district's local rules and guidelines.
12. **Employee Benefits.** WF&G reviewed the Debtors' various employment contracts, other compensation policies and benefit plans and provided the Debtors with substantial advice concerning identifying and implementing opportunities for substantial savings. The Debtors were actively involved in maintaining employee morale, a crucial factor in running a successful manufacturing operation and enhancing the likelihood of a successful reorganization. On the Petition Date, the Court entered an order authorizing the Debtors to honor certain prepetition wages, salary and other compensation paid to employees prior to the Petition Date. The Court also authorized the continued payment of health, life and other benefits. In addition, on or about September 17, 1997, this Court entered an order approving (a) enhanced severance and retention program for certain employees; (b) payment of accrued unpaid personal absence time to those employees; (c) payment of unused Personal Absence Time earned in the year of termination to terminated Ordinary Employees; and (d) payment of severance to seven employees terminated immediately prior to the Petition Date. The approval and implementation of these wage and benefit programs generated substantial goodwill in maintaining morale and generally focusing the Debtors' work force on managing and operating the Debtors' businesses.
13. **Management Compensation Reduction.** On January 27, the Court approved the Debtors' management compensation reduction and incentive plan (the "Compensation Reduction Plan"). With the assistance of WF&G, the Debtors developed the Compensation Reduction Plan that provided for approximately \$1 million in additional cuts above those made prior to the implementation of the Compensation Reduction Plan. The Compensation Reduction Plan also provided incentives designed to induce key management employees to remain through the restructuring process. The participation of these key management employees was essential to the successful reorganization.

14. **Schedules and Bar Date.** WF&G assisted each of the 15 Debtors with the preparation and filing of their schedules and statements of affairs. WF&G assisted the Debtors and Donlin Recano & Co., agent for the Clerk of the Bankruptcy Court, with providing notice to all creditors scheduled by the Debtors.
15. **Liquidation of INDI.** On December 3, 1997, the Court approved the Debtors' decision to liquidate Independent National Distributors, Inc. ("INDI"), a debtor and debtor in possession in these cases. WF&G was instrumental in the developing of the procedures to liquidate INDI and continued to assist the Debtors with the implementation of the liquidation process. The liquidation of INDI was a pivotal part of the overall reorganization of the Debtors.

EVALUATING WF&G's SERVICES

XLI. WF&G has satisfied the criteria for allowances of compensation. "[T]he 'lodestar' method of fee calculation developed by the Third Circuit, see Lindy Bros. Builders Inc. v. American Radiator & Standard Sanitary Corp., 487 F.2d 161, 167 (3d Cir. 1973), is the method to be used to determine a 'reasonable' attorney fee in all the federal courts, including the bankruptcy courts." In re Cena's Fine Furniture, Inc., 109 B.R. 575, 581 (E.D.N.Y. 1990). Accord In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991) ("In determining the reasonableness of the requested compensation under § 330, Bankruptcy Courts now utilize the lodestar method.").

XLII. "The lodestar amount is calculated by multiplying the number of hours reasonably expended by the hourly rate, with the 'strong presumption' that the lodestar product is reasonable under § 330." Drexel, 133 B.R. at 22 (citations omitted).

WF&G's hourly rates and fees charged are consonant with the market rate for comparable services. As set forth in the Affidavit of Matthew A. Feldman, Esq., annexed hereto as Exhibit "A," the hourly rates and fees charged are the same as those generally charged to, and paid by, WF&G's other clients.

XLIII. The number of hours expended by WF&G were actual and necessary. "[T]he appropriate perspective for determining the necessity of the activity should be prospective: hours for an activity or project should be disallowed only where a Court is convinced it is readily apparent that no reasonable attorney should have undertaken the activity or project or where the time devoted was excessive." Drexel, 133 B.R. at 23 (emphasis added).

XLIV. Moreover, in passing upon the reasonableness of hours expended, courts should be mindful of the "practical judgments, often with severe time constraints, [professionals make] on matters of staffing, assignments, coverage of hearing and meetings, and a wide variety of similar matters." Id. These judgments are presumed to be made in good faith. Id.

WF&G'S REQUEST FOR FINAL COMPENSATION

XLV. Concerning the level of compensation, section 330 of the Bankruptcy Code provides, in pertinent part, that the court may award to a professional person, including the debtor's attorney:

- (1) reasonable compensation for actual, necessary services rendered by such . . . professional person, or attorney . . . based on the nature, the extent, and the value of

such services, the time spent on such services, and the cost of comparable services other than in a case under this title

11 U.S.C. § 330. The Congressional intent and policy expressed in section 330 of the Bankruptcy Code is to provide for adequate compensation to continue to attract qualified and competent practitioners to bankruptcy cases.

XLVI.WF&G submits that its request for final allowance of compensation is reasonable. The services rendered by WF&G, as highlighted above, required substantial time and effort, much of which occurred under extreme pressure and during nights and weekends. The demand for WF&G's services has been particularly acute because the Debtors employed a limited in-house legal staff.

XLVII.The services rendered by WF&G during the Application Period were performed diligently and efficiently. In numerous instances, WF&G was able to successfully resolve disputes without the need to resort to the Court. When necessary, WF&G actively represented the Debtors' interests before the Court and, through litigation or settlement, substantially furthered the Debtors' reorganization efforts.

XLVIII.During the Application Period, WF&G encountered a myriad of novel and exceedingly complex legal issues, often requiring extensive research and drafting. WF&G was called upon to respond -- often with immediacy -- to a host of issues and demands. WF&G brought to bear legal expertise in many areas,

including bankruptcy, real estate, corporate and securities law, employee benefits and federal and state taxation. WF&G attorneys have rendered advice in all of these areas with skill and great dispatch.

XLIX. In sum, WF&G's request for final compensation reflects the time, skill and effort expended toward the goals of maximizing the value of the Debtors' assets and confirming the consensual Plan for the benefit of all creditors. The professional services rendered and related expenses incurred and expended have been necessary and beneficial to the Debtors and their estates and creditors.

AMOUNT REQUESTED AS FINAL ALLOWANCE

L. WF&G's attorneys and paraprofessionals expended an aggregate of approximately 9,498.70 hours on the Debtors' cases during the Application Period, including approximately 3,112.50 hours during the Uncompensated Period. During the Application Period, WF&G's standard hourly billing rates ranged from \$115 to \$535 per hour for attorneys, and from approximately \$85 to \$115 per hour for legal assistants and other paraprofessionals. WF&G has made every effort to have services for the Debtors performed by qualified professionals charging the lowest hourly rates.

LI. At this time, WF&G requests that the Court award WF&G final compensation of \$2,252,878.00 for professional services rendered during the Application Period, inclusive of \$742,247.50 for the Uncompensated Period.

DISBURSEMENTS

LII.WF&G incurred actual and necessary out-of-pocket expenses during the Application Period, in connection with the rendition of the professional services described above, in the amounts summarized in paragraph sixteen of this Application. WF&G has disbursed the sums set forth in Exhibit "D" as expenses incurred in the rendition of professional services during the Uncompensated Period. Such expenses were actual and necessary out-of-pocket expenses and do not include a charge for profit. Accordingly, WF&G hereby requests that the Court award WF&G final allowance of \$297,740.39 for reimbursement of expenses, which is inclusive of \$76,257.64 for the Uncompensated Period.

LIII.The disbursements for which WF&G seeks reimbursement include the following:

- Duplicating - charged at \$.15² per page.

The charge per page includes a charge for maintaining the duplicating facilities;

- Telecommunications - long distance calls are billed at actual cost. Outgoing facsimile transmittals are billed at \$.75³ per page, while there is no charge for incoming facsimiles;

² Duplicating was charged at \$.19 per page prior to September 1, 1997

³ Outgoing facsimile transmittals were charged at \$.60 per page prior to September 1, 1997

- Overtime expense - WF&G's practice is to allow any professional working later than 8:00 p.m. to charge a meal to the appropriate client. The meal charge is limited to \$20 per professional; and

- Local car service - WF&G's practice is to allow attorneys, legal assistants and secretaries to charge car service to the appropriate client after 8:00 p.m.

LIV. Additional information concerning WF&G's billing of expenses is set forth in the certified statement annexed hereto as Exhibit "E," as required by the Administrative Order, and the information required by section 504 of the Bankruptcy Code and Bankruptcy Rule 2016 is contained in the affidavit of Matthew A. Feldman, Esq., annexed hereto as Exhibit "A."

PROCEDURE

LV. WF&G will provide notice of this Application in the manner and to those parties identified in the Confirmation Order. WF&G submits that no other or further notice of this Application is necessary or required.

CONCLUSION

WHEREFORE, WF&G respectfully requests that this Court enter an order awarding WF&G:

(a) a final allowance of compensation for professional services rendered as attorneys for the Debtors during the Application Period in the aggregate amount of \$2,252,878.00, less

the \$1,208,504.40 previously awarded and paid, for a net amount of \$1,044,373.60;

(b) a final allowance of reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the aggregate amount of \$297,740.39, less \$221,482.75 previously awarded and paid, for a net amount of \$76,257.64; and

(c) such other and further relief as may be just and proper.

Dated: New York, New York
October 2, 1998

WILLKIE FARR & GALLAGHER
Attorneys for the Debtors
and Reorganized Debtors

By: /s/ Matthew A. Feldman
Matthew A Feldman (MF-8961)
(A Member of the Firm)

787 Seventh Avenue
New York, New York 10019
(212) 728-8000