

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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

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APPLICATION OF WILLKIE FARR & GALLAGHER, AS  
ATTORNEYS FOR CONCORD RECORDS, INC. AS DEBTOR AND  
DEBTOR IN POSSESSION, FOR FINAL ALLOWANCE OF  
COMPENSATION FOR SERVICES RENDERED TO AND  
REIMBURSEMENT OF EXPENSES INCURRED ON BEHALF OF  
CONCORD RECORDS, INC. FROM AUGUST 20, 1998  
THROUGH AUGUST 18, 1999, INCLUSIVE

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

Willkie Farr & Gallagher ("WF&G"), attorneys for  
Concord Records, Inc. ("Concord"), one of the above-captioned  
debtors and reorganized debtors, as and for its application (the  
"Application") for final allowance in Concord's chapter 11 case  
of compensation for professional services rendered and  
reimbursement of expenses incurred from August 20, 1998 through

August 18, 1999, inclusive (the "Application Period"),<sup>1</sup>  
respectfully represents:

#### INTRODUCTION

1. Pursuant to the Third Amended Joint Plan of Reorganization for Alliance Entertainment, Inc. and certain direct and indirect subsidiaries thereof (the "Alliance Plan"), the capital stock of Concord was distributed to certain senior creditors of Alliance; however, Concord was not reorganized pursuant to the Alliance Plan. Accordingly, as of August 20, 1998, the effective date of the Alliance Plan, Concord continued to operate as a debtor in possession, independent of Alliance (the "Post-Alliance Period").

2. As part of the operational restructuring of the collective Debtors, the Debtors determined that to maximize the value of Concord's estate, a sale, either through a stock sale or asset sale, of Concord to a third party was necessary. At the time of consummation of the Alliance Plan, however, a sale of Concord had not yet been finalized despite several rounds of

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<sup>1</sup> Concord's chapter 11 case was commenced on July 14, 1997 and procedurally consolidated with the cases of Alliance Entertainment, Inc. ("Alliance") and certain of its direct and indirect subsidiaries (collectively, the "Debtors"). On August 20, 1999, the Debtors, other than Concord, consummated their Third Amended Joint Plan of Reorganization. By order, dated November 2, 1998, this Court approved, on a final basis, all fees rendered and expenses incurred by professionals to and on behalf of all of the Debtors, including Concord, for the period commencing July 14, 1997 and ending August 19, 1998. Accordingly, this Application is solely with respect to the period commencing August 20, 1998 and ending August 18, 1999.

intense negotiations with various prospective purchasers. Nevertheless, conventional wisdom dictated that, due to, among other things, the nature of Concord's business as a holder of intellectual property, a sale within the bankruptcy process remained the best available mechanism for maximizing the value of Concord's estate. Accordingly, the various parties in interest determined to exclude Concord from the Alliance Plan.

3. During the Post-Alliance Period, Concord has expended great efforts to preserve and maximize the value of its estate for the common benefit of creditors and employees alike, pending the ultimate sale of its business to a third party. Among other things, Concord, with the assistance of WF&G, was compelled to seek its own source of debtor in possession financing which was subsequently refinanced again with the assistance of WF&G through an amendment to the facility, maintain employee loyalty and morale, assist with negotiations held with more than one party regarding the sale of Concord's senior creditors' interests in the estate, and ultimately, formulate, confirm and consummate a viable plan of reorganization.

4. Concord initially formulated in September 1998 a plan of reorganization that was based upon a funding of the plan through a sale of the senior creditors' interests to a third party and provided for a one-hundred percent distribution in installments to trade creditors. During the end of 1998 and through the winter and spring of 1999, Concord participated in

numerous negotiations of the sale of the senior creditors' interests designed to form the basis for a plan of reorganization.

5. By order, dated July 23, 1999 (the "Confirmation Order"), this Court confirmed the Second Amended Plan of Reorganization for Concord Records, Inc. (the "Plan"). The Plan was consummated on August 18, 1999.

6. 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, legal acumen and dedication are partially responsible for this success story.

7. In conjunction with the Concord's management, WF&G has performed each of the tasks described herein within every deadline imposed by this Court or requested by Concord's 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 efficiently administering Concord's chapter 11 case and ensuring that maximum value for the Concord's assets was received.

## BACKGROUND

8. On July 14, 1997 (the "Petition Date"), Concord filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Concord has continued in possession of its property and in the management and operation of its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. This chapter 11 case was and is consolidated with the chapter 11 cases of Alliance Entertainment, et al. ("Alliance"), for procedural purposes only and is being jointly administered pursuant to an order of this Court.

9. On July 23, 1997, the United States Trustee for the Southern District of New York (the "United States Trustee") appointed an official committee of unsecured creditors (the "Creditors' Committee") in the jointly administered cases. The Creditors' Committee is no longer active in Concord's chapter 11 case. No trustee or examiner has been appointed in these cases.

10. The Chase Manhattan Bank ("Chase"), as Agent Bank for the Debtors' prepetition secured bank lenders (the "Prepetition Lenders"), has assumed an active role in this case.

11. Concord is one of the most respected recording labels in the jazz community. Concord's catalog of over seven hundred recordings includes releases by such well-known artists as Mel Torme, Rosemary Clooney, Stan Getz and Maynard Ferguson.

12. 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 AWARDS

13. As stated, by order, dated November 2, 1998, this Court approved on a final basis, all fees rendered and expenses incurred by professional to and on behalf of all of the Debtors, including Concord, for the period commencing July 14, 1997 and ending August 19, 1998 (the "Alliance Fee Order"). Prior hereto, WF&G has not submitted an application for interim allowances of compensation rendered and reimbursements of expenses incurred during the Post-Alliance Period. Accordingly, to date, WF&G remains uncompensated during the Post-Alliance Period.<sup>2</sup>

#### THE APPLICATION

14. 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

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<sup>2</sup> WF&G determined not to seek interim compensation during the Post-Alliance Period in the interest of judicial economy and to assist Concord with minimizing reorganization costs and addressing certain liquidity restraints.

professional services WF&G rendered for the Debtors during the Application Period in the amount of \$149,711.00; 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 \$27,891.34 (together, the "Final Allowance").

15. The Final Allowance reflects, and does not include, an aggregate voluntary reduction of \$2,735.90 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 Concord's case and performed minimal services for Concord, (b) time voluntarily written off by WF&G during the Application Period 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 Concord's estate.

16. 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 this case and in discharge of WF&G's professional responsibilities as attorneys for Concord in its chapter 11 case. WF&G's services were substantial, necessary, and beneficial to Concord and its estate, creditors, and other parties in interest. Despite the variety and complexity of the issues involved in this case and the need to act or respond on an expedited basis to

those issues, which sometimes required night and/or weekend work, WF&G attorneys have worked diligently, as this Application demonstrates, to keep all fees and disbursements to a minimum.<sup>3</sup>

17. 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 this case.

18. WF&G has received no payment or promise of payment for the services rendered in, or in anticipation of, this case other than in connection with those fees and disbursements approved and paid pursuant to the Alliance Fee Order. 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."

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<sup>3</sup> As an example of minimizing out-of-pocket costs to Concord, WF&G arranged for the copying of the Plan and Disclosure Statement to be billed through WF&G, which resulted in a several thousand dollar reduction in costs. As with all other disbursements incurred during the Application Period, WF&G has not yet been reimbursed for such costs.



19. 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 daily time records for the Application Period, 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."<sup>4</sup>

20. 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 Application Period, the aggregate time expended by each individual during the Application Period, his or her blended hourly billing rate during the Application Period, and the amount of WF&G's fees attributable to each individual.

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<sup>4</sup> As of the effective date of the Alliance Plan, to distinguish services rendered to Concord from those rendered to reorganized Alliance, WF&G maintained all entries of time for services rendered to Concord under a segregated matter number. Accordingly, all time reported herein is reported in a single matter designation. As the services rendered to Concord during the Application Period have been generally performed in discreet time periods, WF&G submits that the various tasks performed by WF&G professional are easily discernible. Nevertheless, to the extent necessary, WF&G requests a waiver of the requirement that all time recorded be reported under separate matter designations, as set forth in 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").

21. 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 Application Period is annexed hereto as Exhibit "D."

22. 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."

#### SUMMARY OF SERVICES RENDERED

23. 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 during the Application Period. The full breadth of WF&G's services are reflected in WF&G's time records as annexed hereto.

- **Case Administration.** WF&G contributed significantly to the efficient administration of this case. 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 Prepetition Lenders, the DIP Lenders, prospective purchasers of the

business and their respective professionals, leading to the expeditious and consensual resolution of many issues that have arisen in this case. WF&G also assisted in responding to the inquiries of various parties in interest regarding particular problems and issues which are confronting them. WF&G also assisted Concord with the filing all required monthly operating reports.

- **DIP Financing.** Pursuant to the Alliance Plan, the DIP Financing Facility from which the Debtors, including Concord, funded working capital needs was satisfied and thereafter terminated. With the assistance of WF&G, Concord diligently sought alternative sources of financing and ultimately received a \$2 million, asset based financing commitment from Chase (the "Concord DIP Facility"). On November 4, 1998, this Court approved the Concord DIP Facility on a final basis. In conjunction with the preparation of the sale of Concord's business, by order, dated June 2, 1999, the DIP Financing Facility was amended to provide \$1 million of available borrowings to Concord without consideration to borrowing base restriction or requirements. In addition, Chase was replaced as agent and lender by Act III Communications, Inc. WF&G was instrumental in all stages of negotiation, documentation and approval of the DIP Facility.
- **Plan and Disclosure Statement.** In consultation with its senior secured creditors, Concord, with the assistance of WF&G, formulated a plan of reorganization which was based upon the sale of such secured creditors' interests in the estate (and thus Concord's business) to a third party. The Plan contemplated that a third party acquiring the capital stock of Concord would sufficiently capitalize Concord so as to permit Concord to fulfill all plan obligations and continue as a going concern. Concord filed an amended and second amended plan and disclosure statement to reflect various changes made due to an initial unsuccessful attempt by the senior creditors to consummate the sale of their interests and the resulting renegotiations with a subsequent purchaser. Concord, with the assistance of WF&G, sought and received necessary extensions of its exclusive period to solicit acceptances to its plan of reorganization. WF&G was instrumental in all facets of plan and disclosure statement development, drafting, solicitation, confirmation and approval, and implementation.

- **Sale of the Business.** WF&G, on behalf of Concord, participated in numerous conferences and negotiations regarding the sale of Concord's business. Among other things, WF&G ensured that the terms of the sale were consistent with and appropriate under the Plan and the Bankruptcy Code. WF&G assisted Concord with due diligence conducted by the purchaser and its financiers and was instrumental in the closing of the sale, which permitted the consummation of the Plan.

#### EVALUATING WF&G'S SERVICES

24. 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.").

25. "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.

26. 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).

27. 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

28. 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.

29. 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 Concord does not employ an in-house legal staff.

30. 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 Court intervention. When necessary, WF&G actively represented the Debtors' interests before the Court and substantially furthered the Debtors' reorganization efforts.

31. In sum, WF&G's request for final compensation reflects the time, skill and effort expended toward the goals of maximizing the value of Concord's 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 Concord and its estate and creditors.

AMOUNT REQUESTED AS FINAL ALLOWANCE

32. WF&G's attorneys and paraprofessionals expended an aggregate of approximately 691 hours on Concord's case during the Application Period. During the Application Period, WF&G's standard hourly billing rates ranged from \$210 to \$505 per hour for attorneys, and from approximately \$90 to \$125 per hour for legal assistants and other paraprofessionals. WF&G has made every effort to have services for Concord performed by qualified professionals charging the lowest hourly rates.

33. At this time, WF&G requests that the Court award WF&G final compensation of \$149,711.00 for professional services rendered during the Application Period.

#### DISBURSEMENTS

34. 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 fourteen 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 Application 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 \$27,891.34 for reimbursement of expenses.

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

- Duplicating - charged at \$0.15 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 \$0.75 per page, while there is no charge for incoming facsimiles;

- Working Meal 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.

36. 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

37. 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 \$149,711.00;

(b) a final allowance of reimbursement of actual, necessary expenses incurred in connection with the rendition of such services, in the aggregate amount of \$27,891.34; and

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

Dated: New York, New York  
October 14, 1999

WILLKIE FARR & GALLAGHER  
Attorneys for Concord Records,  
Inc.

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

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