

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : (Chapter 11)
GOLDEN BOOKS FAMILY ENTERTAINMENT, INC., :
et al., :
Debtors. : Case Nos. 99-10030
Through 99-10032 (TLB)
: (Jointly Administered)
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APPLICATION OF THE AD HOC COMMITTEE OF HOLDERS OF
CONVERTIBLE TRUST ORIGINATED PREFERRED SECURITIES
OF GOLDEN BOOKS FINANCING TRUST FOR ALLOWANCE
OF FEES AND EXPENSES PURSUANT TO 11 U.S.C. § 503(B)(3)(d)

The Ad Hoc Committee of Holders of Convertible Trust Originated Preferred Securities of Golden Books Financing Trust (the “TOPrS Committee”) submits this Application for Allowance of Fees and Expenses Pursuant to 11 U.S.C. § 503(b)(3)(D) (the “Application”), pursuant to the Amended Joint Plan of Reorganization Under Chapter 11 Of The Bankruptcy Code approved by the Court on September 1, 1999 (the “Plan”). By the Application, the TOPrS Committee seeks payment of legal and financial advisory fees incurred for the period February 26, 1999 through September 1, 1999 for services that made a “substantial contribution” to the Debtors in this case. The TOPrS Committee seeks a total of \$216,666.25 in fees and \$10,444.40 for expenses. Of these amounts, \$80,666.25 are legal fees and \$136,000.00 are financial advisory fees, and \$7,988.27 are legal expenses and \$2,456.13 are financial advisory expenses. The breakdown of legal fees and expenses by professional and paraprofessional timekeepers is submitted herewith as Exhibit A to the Certification of James Millstein, dated September 23, 1999 (the “Millstein Certification”), and supporting time detail and expense break-outs are attached to the Millstein Certification as Exhibits B through I. The breakdown of financial

advisory fees by professional and paraprofessional timekeepers is submitted herewith as Exhibit A to the Certification of William Q. Derrough, dated September 23, 1999 (the “Derrough Certification”), and supporting time detail and expense break-outs are attached to the Derrough Certification as Exhibits B and C, respectively.

In support of the Application, the TOPrS Committee respectfully represents as follows:

I. Background

On February 26, 1999 (the “Petition Date”) each of Golden Books Family Entertainment Inc. (“Parent”), Golden Books Publishing Company, Inc. (“Publishing”) and Golden Books Home Video, Inc. (“Video,” and with Parent and Publishing, the “Debtors”) filed voluntary petitions (the “Petitions”) for relief under Chapter 11 of the United States Bankruptcy Code (the “Code”). Prior to the Petition Date, the Debtors had issued 7.65% Senior Notes due 2002 in the principal amount of \$150 million (the “Senior Notes”). As a result of the Debtors’ sustained liquidity difficulties, Publishing determined not to make a September 15, 1998 interest payment on the Senior Notes in favor of attempting to pursue long-term strategic financing and capital restructuring options. Publishing’s failure to make the September 15 interest payment on the Senior Notes resulted in the formation of both an ad hoc committee of Senior Note holders (“Senior Note Committee”) and the TOPrS Committee.

The TOPrS Committee represents the interests of the holders of the TOPrS Certificates, as defined below, and includes Deephaven Capital Management; David Matlin; Stephen J. Devoe, III; Oleg Lagetgo; Anil Suri; Chris Pechock; Stacy Herman; Mark Patterson; Greyhound Line, Inc; Amalgamated CNCL Retirement and Disability Trust, P.R. Co.; Forest Global Convertible Fund Series B-1; Forest Global Convertible Fund Series A-5; Forest Performance Fund; Forest Alternative Strategies Fund II, LP series B-3; Forest Strategies Fund III, LP Series

A-5M; Forest Alternative Strategies Fund II, LP series A-5-2; Forest Fulcrum Fund LP; SoundShore Holdings Ltd; Southshore Opportunity Holding Fund Ltd.; and Krista Cowley. Prior to the Petition Date, and in addition to the Senior Notes, Parent and Publishing had also issued \$118 million in original principal amount of 8.75% Convertible Debentures due 2016 (the “Convertible Debentures”) to the Golden Books Financing Trust (the “TOPrS Trust”), a Delaware Statutory Business Trust. In turn, the TOPrS Trust issued \$118 million of 8.75% Convertible Trust Originated Preferred Securities due 2016 (the “TOPrS Certificates”), which represent undivided beneficial ownership interests in the assets of the TOPrS Trust, including the Convertible Debentures. Pursuant to the terms of the TOPrS Trust, the bankruptcy filing by the Debtors caused a dissolution of the TOPrS trust, upon which the Convertible Debentures were distributed to the holders of the TOPrS Certificates on a pro rata basis. The Convertible Debentures are joint and several unsecured obligations of Parent and Publishing.

Soon after the formation of the TOPrS Committee, the TOPrS Committee retained Cleary, Gottlieb, Steen & Hamilton (“Cleary, Gottlieb”) to represent the TOPrS Committee in connection with prepetition negotiations concerning a possible out of court debt restructuring. As part of these negotiations, Publishing agreed to pay the fees and expenses of Cleary, Gottlieb incurred in connection with such representation. This agreement was memorialized in a retainer letter dated November 1, 1998 between Publishing and Cleary Gottlieb, attached to the Millstein Certification as Exhibit J thereto. Likewise, the TOPrS Committee retained Jefferies & Company, Inc. (“Jefferies”) as its exclusive financial advisor in connection with the negotiations, and Publisher agreed to pay the fees and expenses of Jefferies incurred in connection with such representation. This agreement was memorialized in a retainer letter dated January 13, 1999 between Publishing and Jefferies, attached to the Derrough Certification as Exhibit D thereto.

Prior to the Petition Date, the Debtors, Senior Note Committee and the TOPrS Committee engaged in extensive negotiations regarding the restructuring of the Debtors' indebtedness and liabilities. These negotiations resulted in an agreement on the terms of a consensual restructuring, which the parties determined would be best accomplished through a "pre-negotiated" Chapter 11 proceeding. On the Petition Date, the Debtors filed the Petitions, and on September 1, 1999 the Court approved the Plan that was the result of these negotiations.

From the beginning of these negotiations, the TOPrS Committee was instrumental in devising the blueprint that led first to the agreement on the terms of a consensual restructuring and eventually the Plan. The unique equity interest of the TOPrS Committee gave the TOPrS Committee certain qualities unique to this process which helped insure that the Plan was fair and equitable. The TOPrS Committee was also able to serve as a bridge between the Debtors and the Senior Note Committee, assisting in resolving differences during contentious periods of negotiations both before and during the Chapter 11 proceedings.

In particular, at key points during the negotiations of the terms and conditions of the Indenture governing the new Senior Notes to be issued under the Plan (the "New Senior Notes"), the TOPrS Committee helped to break impasses between the Senior Note Committee and the Debtors so as to permit the plan process to move forward when it appeared otherwise to stall. As a result of these various interventions in the negotiation process, the TOPrS Committee helped to facilitate the completion of the Plan that the Debtors submitted and that the Court approved, which allows for, among other items, the unsecured creditors of the Debtors (other than the members of the TOPrS Committee) to be paid in full (including post-petition interest).

II. The Present Application

Under Section 503(b)(3)(D) and (b)(4) of the Bankruptcy Code, a creditor who has made a substantial contribution to a chapter 11 case shall have an administrative expense claim for its reasonable fees and necessary expenses and the reasonable fees and expenses of its counsel and other professionals. See 11 U.S.C. § 503(b)(3)(D) and (b)(4)¹; In re Best Prods. Co., Inc., 173 B.R. 862, 865 (Bankr. S.D.N.Y. 1994). Although the term “substantial contribution” is not defined in the Bankruptcy Code, courts have defined the substantial contribution standard as whether the party has provided an “actual and demonstrable benefit to the debtor’s estate, its creditors, and to the extent relevant, the debtor’s shareholders.” In re U.S. Lines, Inc., 103 B.R. 427, 429 (Bankr. S.D.N.Y. 1989). The policy underlying this standard is to promote meaningful creditor participation in the reorganization process. See In re General Oil Distribs., Inc., 51 B.R. 794, 805 (Bankr. E.D.N.Y. 1985).

Put another way, services that substantially contribute to a case are those that foster and enhance the progress of the case, rather than retard or interrupt it. See In re Richton Inter’l Corp., 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981). Such services generally take the form of

¹ Section 503(b)(3)(D) and (b)(4) of the Bankruptcy Code provide:

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including --

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by -- (D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and

constructive contributions in key reorganizational aspects, when but for the role of the creditor, the movement toward final reorganization would have been substantially diminished. See In re D.W.G.K. Restaurants, Inc., 84 B.R. 684, 690 (Bankr. S.D. Cal. 1988). The factors most often considered in determining whether a substantial contribution has been made to the estate are: whether the services were rendered solely to benefit the client, or to benefit all parties to the case; whether the services provided a direct, significant and demonstrable benefit to the estates; and whether the services rendered were duplicative of services performed by others, namely the debtor, the debtor's attorney, the official committees, or the attorneys for the official committees. See In re Baldwin-United Corp., 79 B.R. 321, 338 (Bankr. S.D. Ohio 1987). If a creditor renders services on behalf of its own interest but also confers a significant and demonstrable benefit to the estate and its creditors, expenses thereby incurred should be compensated by the estate. See In re McLean Industries, Inc., 88 B.R. 36, 39 (Bankr. S.D.N.Y. 1988).

The Services for which fees and expenses are sought by the TOPrS Committee in the Application pursuant to Section 503(b)(3)(D) easily satisfy those standards. Consistent with the case law construing Section 503(b)(3)(D), the TOPrS Committee seeks compensation only for those services that made a "substantial contribution" to the Debtors' estates. Specifically, the TOPrS Committee seeks compensation for the following categories of activities: 1) Negotiation of the disclosure statement, the Plan and the New Senior Note Indenture (as defined in the Plan); 2) Investigation of security interests held by holders of secured claims; 3) Work involved in creating a strategy regarding, and in reaching settlements of, certain class action claims against the Company; 4) Work involved in the valuation of the estates of the Debtors for the purpose of

the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant...

reasonably valuing the New Senior Notes; 5) Negotiations regarding, and selection of, the new Board of Directors; and 6) General work in other aspects of the proceedings.

1. Negotiation of the Disclosure Statement, the Plan and the New Senior Note Indenture

The TOPrS Committee was instrumental in negotiating the Disclosure Statement, the Plan and the New Senior Note Indenture. The TOPrS Committee was particularly active in negotiating the New Senior Note Indenture, which contains the terms under which the Debtors are issuing the New Senior Notes. One goal of the TOPrS Committee was to insure that the covenants of the Debtors in the New Senior Note Indenture were not unduly restraining in order to give the Debtors, upon reorganization, sufficient flexibility in their operations to be able to grow their business, while at the same time protecting the legitimate interests of the holders of the Senior Notes. With this perspective, the TOPrS Committee helped to ensure that the negotiation of the Senior Note Indenture was completed and did not further delay confirmation of the Plan. The unique position of the TOPrS Committee, as the only creditor constituency taking only equity under the Plan, enabled the TOPrS Committee to make a unique contribution to these negotiations as a go-between for the Debtors' secured creditors and their management.

2. Investigation of Security Interests

The TOPrS Committee assisted in the investigation of the security interests of the holders of the Senior Notes, including examining various documents allegedly granting security interests to such claimants and investigating whether such interests were properly granted and perfected. Based on this investigation, the Debtors and the TOPrS Committee ultimately decided not to pursue any claims against any allegedly secured parties permitting the Plan to go forward.

3. Settlement of the Class Action Claims

The Debtors were defendants in Kevin Lemmer v. Golden Books Family Entertainment, Inc., et al., Case No. 98 CIV 5748 (AGS) and Green Fund and Cynthia Green Colin v. Golden Books Family Entertainment, Inc., et al., Case No. 98 CIV 7072 (AGS), both class action lawsuits alleging violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. The TOPrS Committee, in the interest of protecting unsecured creditors' claims against being diluted by securities fraud claims subject to subordination under the Bankruptcy Code, encouraged the Debtors to reach a reasonable settlement with the plaintiffs in such lawsuits on terms that did not unduly burden the estate.

4. Valuation of the Assets of the Debtors

The TOPrS Committee was also active in valuing the assets of the Debtors so as to ensure that the amount of new debt issued under the Plan did not unduly burden the restructured Debtors' operations. Such work included conducting an extensive due diligence of the Debtors, including analysis of significant amounts of financial and operational data including historical and projected data generated by the Debtors and an analysis of the revised four-year business plan and each area of operation and competitive outlook.

5. Negotiations Regarding, and Selection of, the New Board of Directors

The TOPrS Committee was instrumental in negotiating the size and composition of the new Board of Directors of Publishing, and, after a comprehensive analysis, selected three members of the new Board of Directors.

6. General Work During the Bankruptcy Proceedings

The TOPrS Committee was also active in other aspects of the bankruptcy proceedings, including reviewing and commenting on post-petition and post-confirmation financing documents, reviewing the current financial situation of the Debtors, assisting in the

negotiations of employment agreements with the management of the Debtors and keeping holders of TOPrS Certificates informed of developments in the bankruptcy proceedings.

CONCLUSION

WHEREFORE, the TOPrS Committee respectfully requests that the Court award compensation for services rendered over the period February 26, 1999 to September 1, 1999 in the amount of \$216,666.25 and award reimbursement of actual, necessary expenses in connection with the rendition of such services, in the amount of \$10,444.40. Prior to the commencement of these Chapter 11 cases, Cleary, Gottlieb received a retainer in the amount of \$82,500. In the event this application is granted, Cleary, Gottlieb will apply the retainer to the amount so approved for legal fees and expenses and remit the balance, if any, to Publishing.

Dated: New York, New York
September 23, 1999

Respectfully submitted,

CLEARY, GOTTLIEB, STEEN & HAMILTON

By: _____ /s/
James Millstein, Esq. (JM _____)

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Of Convertible Trust Originated Preferred Securities of
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