

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : (Chapter 11)
GOLDEN BOOKS FAMILY ENTERTAINMENT, : Case Nos. 99-10030
INC., et al., : Through 99-10032 (TLB)
: :
Debtors. : (Jointly Administered)

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**APPLICATION OF THE BANK OF NEW YORK,
INDENTURE TRUSTEE FOR THE HOLDERS
OF THE 8 ¼ CONVERTIBLE DEBENTURE
FOR ALLOWANCE OF FEES AND EXPENSES
PURSUANT TO 11 U.S.C. §503(b)**

The Bank of New York (“BNY”), Indenture Trustee for the 8 ¼ Convertible Debenture due 2016, issued pursuant to the Indenture dated as of August 26, 1996 (the “Indenture”) between Golden Books Family Entertainment, Inc., Golden Books Publishing Company, Inc. and BNY, submits this Application for Allowance of Fees and Expenses pursuant to 11 U.S.C. §§503(b)(1), 503(b)(3)(D), 503(b)(4) and 503(b)(5) for the reimbursement of fees and expenses due BNY, including the fees of its counsel, Emmet, Marvin & Martin, LLP (“EM&M”), for the period February 26, 1999 through September 1, 1999 (the “Application Period”). BNY seeks an aggregate amount of \$27,749.92. Of this amount, \$19,675.50 are legal fees of EM&M; \$230.67 represents expenses issued by EM&M; and \$7,843.75 represents administrative fees of BNY and fees for other services rendered by BNY.

In support of the Application, BNY respectfully represents as follows:

I. BACKGROUND

1. BNY is the indenture trustee for the holders (the “Holders”) of the 8 ¼ Convertible Debentures (the “Convertible Debentures”) issued under the Indenture. BNY is also the trustee under the Golden Books Financing Trust (the “TOPrS Trust”). The Convertible Debentures were initially issued to the TOPrS Trust who in turn issued approximately \$118 million of 8.75% Convertible Trust Originated Preferred Securities due 2016 (the “TOPrS Certificates”). Pursuant to the terms of the TOPrS Trust, the bankruptcy filing by the Debtors on February 26, 1999 (the “Petition Date”) caused a dissolution of the TOPrS Trust, whereupon the Convertible Debentures were distributed to the holders of the TOPrS Certificates as a pro rata basis. While a number of Holders were members of the Ad Hoc Committee of TOPrS Holders, BNY, as indenture trustee, was required to participate in this case as a representative of all Holders.

2. The filing of Chapter 11 by the Debtors on the Petition Date constituted an Event of Default under Section 501 of the Indenture.

3. Pursuant to Section 601 of the Indenture and Section 77(c) of the Trust Indenture Act of 1939 (the “TIA”, 15 U.S.C. §§77aaa-77bbb), after the occurrence of an event of default under the Indenture, BNY was required to use the “same degree of care and skill” in connection with exercising the rights and remedies available to it under the Indenture “as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.”

4. In this case BNY fulfilled its contractual and statutory duties to the Holders as required by the Indenture and the TIA in a manner which not only benefited

the Holders but which also conferred a direct benefit upon the Debtors and the other parties in interest in this case. As set forth below BNY, and its counsel, EM&M are entitled to an allowed administrative expense claim pursuant to Bankruptcy Code §503(b)(1). In addition, BNY and EM&M are entitled to reimbursement of their fees and expenses pursuant to the “substantial contributions” provision found in Bankruptcy Code §§503(b)(3)(D), 503(b)(4) and 503(b)(5).

II. APPLICABLE LAW

5. BNY and EM&M are entitled to be reimbursed for fees and expenses under Bankruptcy Code §503(b)(1). Section 609 of the Indenture specifically provides that all fees and expenses of BNY incurred after the occurrence of an Event of Default (including reasonable attorney’s fees) shall constitute expenses of administration pursuant to Bankruptcy Code §503(b)(1).

6. These fees and expenses qualify for administrative expense status under Bankruptcy Code §503(b)(1) since (i) the Debtor specifically contracted to pay these fees and expenses, (ii) all fees and expenses were incurred subsequent to the Petition Date and (iii) the fees and expenses of BNY and its counsel were reasonable and necessary to the successful reorganization of the Debtors.¹ See In re Chateaugy Corp., 10 F.3d 944 (2nd Cir. 1993).

7. In addition, BNY and its counsel are entitled to an administrative expense claim for reimbursement of their reasonable expenses pursuant to the

¹ Section 2.2 of the Debtors’ Plan recognizes that BNY has rendered a “substantial contribution” to the Chapter 11 cases within the meaning of Bankruptcy Code §503(b). Since BNY’S services have been deemed to meet the standard for “substantial contribution” there can be no doubt that these services also meet the lesser “reasonable and necessary” standard.

“substantial contribution” provision of Bankruptcy Code §§503(b)(3)(D), 503(b)(4) and 503(b)(5).

8. 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). 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).

9. The services for which fees and expenses are sought by BNY in the Application pursuant to Section 503(b) easily satisfy those standards and the Debtors, as set forth in Section 2.2 of the Plan have acknowledged that BNY has made a substantial contribution in these cases.

10. The services provided by BNY and EM&M during the Application Period include the review of the relationship between the Indenture and the TOPrS’s Trust and the explanation of the provisions of these documents to Holders and holders of the Convertible Securities; the preparation of Notices to Holders and the response to questions presented by individual Holders; the review of the Plan and Disclosure Statement filed by the Debtors and conferences with the Debtors’ attorneys regarding

these documents; conferences with the U.S. Trustee and counsel for the Holders regarding the formation of an official unsecured creditors committee; the preparation of the proof of claim on behalf of the Holders and conferences with representatives of the Debtors and the Holders regarding the claim; the review of the procedure for soliciting votes in these cases and conferences with the representatives of the Debtors and the Balloting Agent regarding the distribution of ballots to the record and beneficial Holders; the monitoring of the proceedings in the Chapter 11 cases leading up to confirmation of the Debtors' Plan and providing notices to the Holders regarding the confirmation process and the procedures for voting.

11. In summary, the actions of BNY and EM&M clearly facilitated the swift progress made by all parties in these cases towards the confirmation of the Debtors' Plan and BNY and EM&M fulfilled their contractual and statutory obligation to the Holders in an efficient and cost-effective manner. This fact was recognized by the Debtors in Section 2.2 of the Plan which acknowledges that BNY as indenture trustee, made a substantial contribution to these cases pursuant to Bankruptcy Code §503(b).

12. The breakdown of legal fees by EM&M professionals and paraprofessional timekeepers is submitted herewith as Exhibit A to the Certification of Edward P. Zujkowski (the "Zujkowski Certification"), the supporting time and expense detail are attached to the Zujkowski Certification as Exhibit B and the breakdown of the administrative fee and individual time charges of BNY are attached to the Zujkowski Certification as Exhibit C.

CONCLUSION

WHEREFORE, BNY respectfully requests that the Court award compensation for services rendered over the Application Period to BNY and EM&M in the amount of \$27,749.92 representing legal fees of EM&M of \$19,675.50, expenses of EM&M of \$230.67 and fees of BNY of \$7,843.75, together with such other and further relief which this Court deems just and proper.

Dated: New York, New York
September 29, 1999

Respectfully submitted,

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