

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: :
GOLDEN BOOKS FAMILY : :
ENTERTAINMENT, INC. et al, : Case Nos. 99-10030
: through 99-10032(TLB)
Debtors. : Jointly Administered
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**APPLICATION OF HSBC BANK USA, INDENTURE TRUSTEE, FOR
REIMBURSEMENT OF EXPENSES, INCLUDING FEES AND EXPENSES OF
COUNSEL TO HSBC PURSUANT TO SECTIONS 503 AND 507 OF THE
BANKRUPTCY CODE**

HSBC Bank USA f/k/a Marine Midland Bank (“HSBC” or “Indenture Trustee”), the Indenture Trustee under the 7.65% Senior Notes due 2002 in the principal amount of \$150,000,000 (the “Senior Notes”) issued by Golden Books Publishing Company, Inc. (as successor to Western Publishing Group, Inc.) (“Golden Books) hereby files its application (the “Application) for reimbursement of fees and expenses, including the fees and expenses of its counsel, Pryor Cashman Sherman & Flynn LLP (“PCS&F”), in the aggregate amount of \$95,884.27 as expenses of administration pursuant to 11 U.S.C. §§ 503 and 507¹, and in support of its Application respectfully represents and sets forth as follows:

**I.
INTRODUCTION**

This Application is made by HSBC pursuant to the terms of the Amended Joint Plan of Reorganization (the “Plan”) of Golden Books Family Entertainment Inc., *et al*, Debtors (the

¹ HSBC’s application for allowance and payment of fees and expense does not constitute a waive of HSBC’s right to assert its lien on amounts due the holders of the Senior Notes under the terms and conditions set forth in the Indenture appointing HSBC. HSBC is a secured creditor by virtue of its lien under Section 6.6 of the Indenture on distributions to the Noteholders and by virtue of the Debtors’ pledge of collateral to secure the Senior Notes and the fees of the Indenture Trustee.

“Debtors”) confirmed on September 1, 1999 (the “Confirmed Plan”). Under the terms of the Confirmed Plan, certain claimants, including HSBC as the Old Senior Note Indenture Trustee are required to submit timely requests for payment of fees and expenses pursuant to Section 503(a) of title 11 of the United States Code (“the Bankruptcy Code”).

HSBC is entitled to reimbursement of its expenses as administrative expense claims pursuant to the provisions of the Debtors’ Confirmed Plan. HSBC submits that the services provided in its capacity as Indenture Trustee substantially contributed to the success of the Debtors’ reorganization. Indeed, in Section 2.2 of the Plan, the Debtors acknowledge that HSBC as Indenture Trustee has “rendered a substantial contribution in the Chapter 11 cases within the meaning Section 503(b) of the Bankruptcy Code.”

In addition, HSBC claims a right to payment of its reasonable fees and expenses, including the fees and expenses of PCS&F under the provisions of the Indenture between HSBC as Indenture Trustee and Golden Books as issuer. HSBC submits that the Indenture constitutes a valid, binding agreement by which Golden Books contracted with HSBC to perform certain services for compensation (which is to be treated as expenses of administration in the event of a bankruptcy), and which services were, in fact, rendered by HSBC. Under generally accepted bankruptcy principles, Golden Books’ obligations under the Indenture, which include the payment of fees and reimbursement of expenses of HSBC as Indenture Trustee should be enforced under, and in accordance with, the terms of the Indenture.

II. BACKGROUND

1. HSBC is the duly qualified and acting Indenture Trustee for the Senior Notes under the Indenture (the “Indenture”) dated as of September 15, 1992, as amended and supplemented,

by and between HSBC as Indenture Trustee and Golden Books, issuer and Golden Books Family Entertainment, Inc. (“GPFE”), as guarantor. In accordance with Article 8 of the Indenture, Golden Books and HSBC retained the right to enter into supplemental indentures for the purpose of, inter alia, evidencing the conveyance, transfer, assignment, mortgage or pledge to the Indenture Trustee, on behalf of holders, of property or assets as security. Accordingly, on May 8, 1996, HSBC, Golden Books and GPFE entered into a First Supplemental Indenture; and on June 2, 1998, entered into a Second Supplemental Indenture. Under the terms of the Second Supplemental Indenture, set forth in Section 12.1 of the Indenture, the interests of the holders of the Senior Notes (the “Holders”) and the fees and expenses of the Indenture Trustee are secured by a first priority lien on assets identified by the defined term First Lien Collateral, and a second priority lien on and security interests on assets identified by the defined term Second Lien Collateral. The Indenture and the Second Supplemental Indenture are attached hereto as Exhibit A and B respectively.

2. The collateral securing the payment obligations under the Senior Notes, as set forth in the June 2, 1998 Security Agreement includes, inter alia,:

a. First Lien Collateral.

- (i) inventory, accounts receivable, chattel paper, documents and proceeds relating to Christmas Classics, Lone Ranger and Underdog (as such terms are defined in the Security Agreement), and the copyrights, copyright licenses, trademarks and trademark licenses associated therewith,
- (ii) certain personal property and fixtures located at the Debtors’ distribution center in Crawfordsville, Indiana, manufacturing facility in Racine, Wisconsin, and corporate headquarters in New York, New York.

b. Second Lien Collateral.

junior liens and security interests in and upon the NationsCredit Collateral (subject to the terms and conditions set forth therein).

3. On September 15, 1998, Golden Books failed to pay its interest payment to the

Holders. Pursuant to Section 6.1 of the Indenture, the continuance of such default became an event of default on October 15, 1998.

4. In September 1998, an informal steering committee consisting of eight Holders of the Senior Notes and HSBC in its capacity as Indenture Trustee (“Informal Noteholder Committee”) was organized to negotiate with Golden Books on behalf of the Holders. The Informal Noteholder Committee retained the law firm of Stroock & Stroock & Lavan, LLP (which was later replaced by Akin Gump Strauss Hauer & Feld LLP) as its legal advisor and Houlihan Lokey Howard & Zukin as its financial advisor. HSBC was represented at all meetings by PCS&F.

5. On or about December 15, 1998, Golden Books’ Board of Directors met and approved the terms of a proposed long-range business plan, including a restructuring proposal, and the 1999 budget. The Informal Noteholder Committee evaluated the business plan and restructuring proposal.

6. On February 26, 1999 (the “Petition Date”), Golden Books, GPFE, and Golden Books Home Video Inc. (collectively, the “Debtors”) filed petitions for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

7. No official creditors committee was appointed in any of these cases.

8. On March 11, 1999, and after weeks of negotiations both prior to and after the Petition Date, the Debtors and the Informal Noteholder Committee reached an agreement for a restructuring of the Debtors’ indebtedness (the “Restructuring Agreement”). Under the plan term sheet annexed to the Restructuring Agreement, Attachment C to the Plan, the Senior Notes will be converted to a new secured note in the principal amount of \$87,000,000 due 2004 with interest at

the rate of 10% if paid in cash, or at the restructured company's option for the first three years, 13.5%, payable in kind (the "New Secured Notes"). In addition, the Holders will receive 42.5% of the restructured company's common stock subject to dilution. HSBC will serve as new indenture trustee under the terms of the new indenture for the New Secured Notes.

9. A bar date of May 26, 1999 was approved by the Court as the last date for filing proofs of claim in the Debtors' Chapter 11 cases. Pursuant to the Indenture governing the Senior Secured Notes, HSBC timely filed a secured proof of claim on behalf of the Holders for the full amount due on the Senior Secured Notes, as well as the fees and expenses of HSBC and PCS&F. HSBC's proofs of claim, filed individually in the respective bankruptcy cases set forth the following amounts: (a) \$150,000,000 in principal amount of the Notes as issued; (b) \$5,131,875.00 in accrued but unpaid interest at the rate specified in the Indenture computed on the basis of a 360 day year consisting of twelve 30-day months as of the Petition Date, and (c) reasonable compensation for HSBC's services as Indenture Trustee and for reimbursement of its reasonable disbursements, expenses and advances incurred or made which includes the legal fees and expenses of its counsel PCS&F in the amount, as of the bar date, of \$48,481.64.

10. On March 25, 1999, the Debtors filed their Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code for the Joint Plan of Reorganization of the Debtors, and the Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code. On May 13, 1999, the Court approved the Debtor's Amended Disclosure Statement. A hearing to consider confirmation of the Debtors' Plan was originally scheduled for July 13, 1999, and was adjourned several times due to the necessity of drafting and finalizing the documents relating to the issuance of the New Secured Notes. Although the Plan was confirmed on September 1, 1999, upon agreement by the parties, the order confirming the Plan will not be entered until such time as at least the indenture

for the New Secured Notes is finalized.

III.
THE PRE AND POST-PETITION ACTIVITIES OF HSBC
AS INDENTURE TRUSTEE

11. Since the effective date of the Indenture appointing HSBC as Indenture Trustee, HSBC has fulfilled its obligations and responsibilities as an Indenture Trustee under both the Indenture and the Trust Indenture Act and as a member of the Informal Noteholder Committee.

12. During the time period that commenced with the Debtors' default in the interest payment due to the Holders, HSBC provided continued notice to the Holders, updating the Holders as to the event of default and the negotiations with the Debtors. Upon the formation of the Informal Noteholder Committee to the time of the Petition Date, HSBC was an active member of the Informal Noteholder Committee and participant in the numerous and extensive teleconferences and meetings as the parties sought to resolve their differences in an attempt to file a consensual pre-negotiated reorganization. HSBC's participation was essential in these cases as the Holders, particularly the smaller holders who do not have the resources to participate individually, rely on the Indenture Trustee to represent their interests.

13. Upon the filing for reorganization by the Debtors, the Indenture Trustee continued its active role as a member of the Informal Noteholders Committee. HSBC and certain members of the Informal Noteholders Committee who agreed to be restricted entered into extensive dialogues with Golden Books to negotiate the terms of a mutually acceptable viable plan.

14. HSBC and its counsel PCS&F expended time drafting and issuing notices to the Holders concerning the on-going status of the Debtors' cases, including notices as to the filing of the petitions for reorganization, the bar date and the hearings on both the plan and the disclosure statement. As stated above, HSBC also drafted and filed proofs of claim on behalf of all Holders

of the Senior Notes. HSBC reviewed the pleadings filed in the Debtors' cases, and participated in discussions with the Office of the U.S. Trustee as to the possible appointment of an unsecured creditors committee.

15. The majority of time expended by HSBC and PCS&F consisted of the review and analysis of the various forms of the restructuring agreement, as well as the plan and disclosure statement. HSBC evaluated the efficacy of these draft documents, provided written and oral comments, and participated in discussions relating to same. In particular, HSBC provided the mechanism for the appropriate and most efficient distribution of the solicitation packages for voting and for the distribution of plan consideration. In addition, HSBC reviewed all documents relating to the issuance of the new common stock and the New Secured Notes. HSBC was required to continuously review, comment and participate in teleconferences to evaluate the corporate documents issuing the notes and stocks; including assisting in the drafting and filing of the appropriate statement of eligibility for a Form T-3 required to be filed with the Securities and Exchange Commission.

16. The New Senior Note documents, including the Indenture for the New Senior Notes under which HSBC will serve as new indenture trustee, the Registration Rights Agreement and the Security Agreement required, and continue to require through the date of this Application, the review, comment and evaluation of HSBC and its counsel.

17. The Debtors are obligated to HSBC, and its counsel PCS&F, for compensation and reimbursement of expenses for the following periods, and in the following amounts:

Fees and Expenses of HSBC incurred under the Indenture

	Pre-petition(10/14/98 – 2/26/99)	Post-petition (2/27/99 - 9/1/99)
Fees	\$3,718.50	\$3,277.00
Expenses	<u>194.24</u>	<u>170.00</u>
Total	\$3,912.74	\$3,447.00

SUB TOTAL **7,359.74**

Fees and Expenses of HSBC’s Counsel PCS&F

	Pre-petition (6/1/98 - 2/26/99)	Post-petition (2/27/99 – 9/1/99)
Legal Fees	\$40,762.75	\$44,879.25
Expenses	<u>599.72</u>	<u>2,282.81</u>
Total	\$41,362.47	\$47,162.06

SUB TOTAL **\$88,524.53**

AGGREGATE TOTALS

Pre-petition Fees & Expenses	\$45,275.21
Post-petition Fees & Expenses	<u>50,609.06</u>
	\$95,884.27

The fees and expenses are specifically set forth in the invoices attached as Exhibit C and the time records of PCS&F annexed as Exhibit D.

**IV.
APPLICATION OF HSBC AS INDENTURE TRUSTEE**

18. HSBC submits this application in accordance with the direction of the Court and to the extent possible, in compliance with the Amended Guidelines for Fees and Disbursements for Professionals in the Southern District of New York, General Order M-151 (the “Fee Guidelines”). The Application includes the fees and expenses of the Indenture Trustee in the performance of its

duties under the Indenture and the Trust Indenture Act, and the fees and expenses of its counsel PCS&F.

FEES

19. In accordance with the terms of the Indenture and the Trust Indenture Act, a customary fee is assessed for the services of the Indenture Trustee. In a default situation, the Indenture Trustee’s duties are increased and HSBC also includes in its request compensation for the officers of HSBC in the performance of the Indenture Trustee’s increased duties. The HSBC officer primarily responsible in these cases is Metin Caner, a vice president of HSBC with extensive experience acting on behalf of HSBC as Indenture Trustee in both out of court work-outs and bankruptcy cases.

20. The fees incurred for services provided by Metin Caner, as the responsible officer is as follows:

	Time Billed and Value Pre-petition	Time Billed and Value Post-petition	TOTAL Time Billed and Value
	7.3 @ 275= \$2,007.50 5.9 @ 290 ² = 1,711.00 13.2 3,718.50	11.3 @ 290 = \$3,277.00	Time Billed: 24.50 Time Value: \$6,995.50
TOTAL			\$6,995.50

21. The majority of the services rendered by PCS&F were performed by Eric M. Hellige, a partner in the Corporate and Banking Department at the firm, and Karel S. Karpe, an associate in the Bankruptcy and Business Reorganization Department at PCS&F. PCS&F submits, as set forth in the attached Certification of Carole Neville, that its fees should be approved at its normal hourly rates charged to both non-bankruptcy and bankruptcy constituencies. PCS&F

represents that these rates are consistent with those typically charged by other New York law firms which maintain national bankruptcy practices. Taking into account all pertinent circumstances of these cases, it is appropriate for the Court to approve payment of the fees at PCS&F's standard hourly rates. See, e.g., In re Ames Dep't. Stores, Inc., 76 B.R. 66 (2nd Cir 1991).

22. The PCS&F professionals and the fees incurred are set forth below:

Name of Professional/ Dep't.	Year of Admission	Time Billed and Value Pre-petition	Time Billed and Value Post-petition	TOTAL Time Billed and Value
<u>Partners</u>				
Eric M. Hellige Corporate	1981	59.65@460=\$27,439.50 <u>5.05@475³=\$ 2,398.75</u> 64.70 \$29,837.75	26.85@475=\$12,753.75	Time Billed: 91.55 Value: \$42,591.50
Carole Neville Bankruptcy	1985	.2 @400 = \$ 80.00 <u>1.3@415 =\$539.50</u> 1.5 \$619.50	.7 @415 - \$290.50	Time Billed: 2.2 Value: \$ 910.00
<u>Associates</u>				
Karel S. Karpe Bankruptcy	1989	11.4@295=\$ 3363.00 <u>18.0@310=\$5,580.00</u> 29.4 \$ 8,943.00	90.1 @ 310=\$27,931.00	Time Billed: 119.50 Value: \$36,874.00
Ronald Sarubbi Banking	1999	4.5 @ 245 = \$1,102.50 <u>1.0 @ 260 = \$ 260.00</u> 5.5 \$1,362.50	10@260=\$2,600.00	Time Billed: 15.50 Value: \$ 3,962.50
Jason Epstein Bankruptcy	1996		.3 @ 280 = \$84.00	Time Billed: .3 Value: \$ 84.00
<u>Paraprofessionals</u>				
George Medina Paralegal	N/A		7.30@125 ⁴ =912.50	Time Billed: 7.30 Time Value \$ 912.50
Anna Greene	N/A		1.50@205=307.50	Time Billed:

² Reflects annual hourly increase as of January 1, 1999.

³ Reflects annual hourly increase as of January 1, 1999.

⁴ Mr. Medina's time has been voluntarily reduced from the corporate paralegal hourly rate to the hourly rate of \$125 charged in bankruptcy cases.

Librarian				1.5 Time Value \$307.50
TOTAL Pre-petition				\$40,762.75
TOTAL Post-petition				\$44,879.25
TOTAL			273.85	\$85,642.00

23. HSBC and PCS&F performed a wide range of professional services, which are summarized under the previous section “The Pre- and Post-Petition Activities of HSBC as Indenture Trustee.”

24. HSBC submits that it has capably and efficiently performed its professional responsibilities and that its services substantially contributed to the estates and the reorganization process. HSBC played an important role in participating in the negotiation, preparation and approval of documents to allow these cases to be filed as pre-arranged. The plan process, as a result of these efforts has been truncated and largely non-contentious, producing an important savings in total administrative expenses.

EXPENSES AND DISBURSEMENTS.

25. The expenses and disbursements sought herein conform to the limits prescribed by the Fee Guidelines and represent the actual cost for each such charge. Neither party will make any profit on the reimbursements sought by the Application.

26. The expenses for which reimbursement is sought are set forth below⁵:

EXPENSES OF HSBC	Pre-petition	Post-Petition	Total
Labels	\$ 124.24	\$ 100.00	\$ 224.24
Lists	\$ 70.00	\$ 70.00	\$ 140.00
TOTAL	\$ 194.24	\$ 170.00	\$ 364.24

EXPENSES OF PCS&F	Pre-Petition	Post-Petition	Total
Photocopying	\$ 81.88	\$ 1,196.46	\$ 1,278.34
Long Distance Telephone	5.02	3.91	8.93
Telecopier	163.82	291.16	454.98
Computer Assisted Legal Research		608.54	608.54
Velo bind and tabs		22.50	22.50
Messenger		34.74	34.74
Car Services	249.00	125.50	474.50
TOTAL	\$599.72	\$2,282.82	\$2,882.53

27. HSBC has not received any compensation or reimbursement of expenses from the Debtors' estates.

V.
**THE FEES AND EXPENSES OF HSBC, WHICH INCLUDE THE FEES AND
EXPENSES OF ITS COUNSEL, ARE PAYABLE AS EXPENSES OF
ADMINISTRATION AS THE SERVICES PROVIDED BY HSBC SUBSTANTIALLY
CONTRIBUTED TO THE DEBTORS' CASES**

28. HSBC submits this Application for allowance and payment of compensation for professional services and reimbursement of expenses incurred. Section 503(b)(3)(D) of the Bankruptcy Code provides that an indenture trustee may seek the reimbursement of actual necessary expenses incurred by an indenture trustee in making a substantial contribution. Section 503(b)(5) of the Bankruptcy Code provides for the reasonable compensations for services rendered by an indenture trustee in making a substantial contribution based on the time, nature extent and

⁵ Only those expenses set forth in the above schedule will be sought, any additional expenses are waived.

value of such services and the cost of comparable services other than in a case under Bankruptcy Code.

29. Section 503(b)(4) of the Bankruptcy Code provides that reasonable compensation for professional services rendered by an attorney of an entity whose expenses are allowable under Section 503(b)(3) of the Bankruptcy Code based on the time, nature and extent and value of such services and the cost of comparable services other than in a case under the Bankruptcy Code and reimbursement of actual necessary expenses incurred by such attorney.

30. The policy goal of allowing compensation for the substantial contribution of a creditor is to promote meaningful creditor participation in the reorganization process. Lebron v. Mechem Financial, Inc., 27 F.3d 937, 944 (3rd Cir. 1994) quoting In re Richton International Corp., 15 B.R. 854, 856 (Bankr. S.D.N.Y. 1981). In furtherance of this goal, Section 503(b) authorizes an award of compensation to professionals who were not retained under the Bankruptcy Code.

31. Substantial contribution is not defined in the Bankruptcy Code and legislative history is of little help in divining a precise measure. In order to determine if the efforts of a creditor resulted in a substantial contribution, a creditor must show that (i) the services were rendered for the benefit of all parties, not just the attorney's client; (ii) the services had a direct, demonstrable benefit to the estate and the administration of the case; and (iii) the services were not needlessly duplicative of those performed by other estate professionals. In re Envirodyne Indus., Inc., 176 B.R. 815, 819 (Bankr. N.D. Ill. 1995). To be compensable, the services must "foster and enhance, rather than retard or interrupt the progress of reorganization." In re Richton Int'l Corp., 15 B.R. at 856. See also In re Paolino, 71 B.R. 576, 581 (Bankr. E.D. Pa. 1987) (the services

must demonstrably benefit the debtor's estate or creditors). Services rendered in furtherance of a plan of reorganization, as is the case here, are compensable.

32. Here, there can be little doubt but that HSBC's fees and expenses, and the fees and expenses incurred by PCS&F on behalf of HSBC, related to services that materially advanced the case for the benefit of the estates and their creditors, and constitutes a substantial contribution to the reorganization process. HSBC played an important role in preparing and approving documentation to allow this case to be filed with an agreement in principle to restructure along the lines of the Plan. Due to the Debtors' intention to emerge from Chapter 11 as soon as possible, HSBC and its counsel PCS&F were often placed under severe time pressures to review documents and provide responses on an immediate basis. The plan process, as a result of these efforts, has been relatively smooth for cases of this size, producing an savings in total administrative expenses. These and other efforts have resulted in a successful plan of reorganization, which has allowed the Debtors to emerge from bankruptcy in a matter of months. In fact, under Article 2 of the Plan, the Debtors acknowledge that HSBC, and its counsel, "have rendered a substantial contribution in the Chapter 11 Cases within the meaning of Section 503(b) of the Bankruptcy Code..."

33. HSBC submits that the requested expenses are actual and necessary and the fees are reasonable and should be approved. In re JLM, 210 B.R. 19, 24 (Bankr. 2d Cir. 1997); Kovalesky v. Carpenter, 1997 U.S. Dist. Lexis 16731 (S.D.N.Y. Oct. 25, 1997). In this jurisdiction, the lodestar method of fee calculation incorporates the factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir 1974) as a means of evaluating the reasonableness of fees. See In re Drexel Burnham Lambert Group, Inc., 133 B.R. 13, 22 (Bankr. S.D.N.Y. 1991).

34. The relevant factors of Johnson include the time and labor required, the novelty and difficulty of the questions presented, the skill required to perform the legal services properly, the

preclusion of other employment by the attorney due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, the time limitations imposed by the client, the amounts involved and the results obtained, the experience, reputation and ability of the attorneys, the undesirability of the case. HSBC submits that application of the foregoing criteria more than justifies an allowance of compensation as requested by this Application. HSBC's professional services and that of its counsel, PCS&F, were rendered in an efficient manner by professionals in the field of business reorganization, restructuring and complex lending transactions. The amounts sought herein are commensurate with compensation allowances in similar cases. The compensation is justified by the complexities of these cases, including the negotiations required among diverse parties with diverse interests.

35. Accordingly, the efforts of HSBC and its counsel PCS&F provided a direct, tangible, and substantial benefit to these cases and to the successful reorganization and, as such the fees and expenses of the HSBC and PCS&F should be allowed pursuant to Section 503 and case law which recognize that payment may be made for appropriate service.

VI.

THE FEES AND EXPENSES OF HSBC AS INDENTURE TRUSTEE ARISE OUT OF THE DEBTORS' CONTRACTUAL OBLIGATIONS AND QUALIFY AS AN EXPENSE OF ADMINISTRATION

A. The Provisions Of The Indenture Provide For The Payment Of HSBC's, And PCS&F's, Fees And Expenses.

36. In numerous provisions of the Indenture, cited below, the fees and expenses of HSBC as Indenture Trustee are, *inter alia*, afforded administrative priority treatment, protected by the granting of a lien, and afforded priority over the distributions to the Holders of the Senior Secured Notes.

37. Section 6.6 of the Indenture (“Compensation and Indemnification of Trustee And Its Prior Claim”) sets forth Golden Books’ agreement to pay HSBC’s fees and expenses as Indenture Trustee, including the costs and expenses of its counsel. Specifically:

The Issuer covenants agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation as shall be agreed to in writing between the Issuer and the Trustee (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and *the Issuer covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ)* except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Issuer also covenants to indemnify and hold harmless the Trustee and each predecessor Trustee, and the directors, offices, employees and agents of each thereof, for and against, any and all loss, liability or expense incurred without negligence or bad faith on its part (including, without limitation, reasonable fees and expenses of its counsel), arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder, including the costs and expenses of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder...

Section 6.6 of the Indenture (emphasis added).

38. Additionally, Section 6.6 expressly protects HSBC’s claim for fees and expenses incurred as Indenture Trustee by granting a lien on all assets held or collected as Indenture Trustee:

...The obligations of the Issuer under this Section 6.6 to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for losses, costs, liabilities, expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. *Such additional indebtedness shall be a senior claim to that of the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payments of principal or interest on particular Securities or Coupons, and the Securities are hereby subordinated to such senior claim and the Trustee shall have a lien therefor prior to the Securities on all such property and funds. Such lien shall survive the satisfaction and discharge of this Indenture...*

Section 6.6 of the Indenture (emphasis added.)

39. In addition, pursuant to the Indenture, Golden Books specifically agreed to the treatment of the Indenture Trustee's fees and expenses as administrative claims. Section 6.6 of the Indenture provides, in relevant part: "(b) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.1(f) and Section 5.1(g), *the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency or other similar law.*" (emphasis added)

40. Moreover, Section 5.3 of the Indenture ("Application of Proceeds") authorizes the Indenture Trustee to collect and receive any distribution made in a bankruptcy proceeding on behalf of the Holders and further underscores the Debtors' obligation to pay the Indenture Trustee in accordance with Section 6.6 even if the distributions are not made through the Indenture Trustee. Section 5.3 provides, in relevant part:

Any moneys collected by the Trustee pursuant to this Article in respect of the Securities shall be applied in the following order at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal or interest, upon presentation of the several Securities and Coupons appertaining to such Securities in respect of which monies have been collected and stamping (or otherwise noting) thereon the payment, or issuing Securities in reduced amounts in exchange for the presented Securities if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses in respect of which monies have been collected, including payments of all amounts due the Trustee and each predecessor Trustee under Section 6.6, and all advances made by the Trustee and each predecessor Trustee and their respective agents and attorneys except as a result of negligence or bad faith...

41. Under 2.11 ("Insertion Article XII") of the Second Supplemental Indenture set forth below in pertinent part, the Debtors' obligations to the Holders are secured:

A new Article 12 of the Indenture is hereby added by inserting the following:

ARTICLE TWELVE-SECURITY

SECTION 12.1 GRANT OF SECURITY INTEREST

To secure the due and punctual payment of the principal of, premium, if any, and interest on the Securities when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, purchase, repurchase, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest (to the extent permitted by law), if any, on the Securities and the performance of all other Obligations of the Issuer to the Holders *or the Trustee* under this Indenture and the Securities, the Issuer hereby covenants to cause the Collateral Agreements to be executed and delivered concurrently with this Indenture and to perform all of the duties and obligations of the Issuer thereunder in accordance with the terms thereof. The Collateral Agreements shall grant to the Collateral Agent first priority Security Interests in the First Lien Collateral and second priority Security Interests in the Second Lien Collateral, subject only to Permitted Liens on real property and tangible assets and, in the case of the Second Lien Collateral, under Section 3.8(7), and shall be deemed hereby incorporated by reference herein to the same extent and as fully as if set forth in their entirety at this place, and reference is made hereby to each Collateral Agreement for a more complete description of the terms and provisions thereof...

(emphasis added).

42. The Debtors' obligations to compensate HSBC for fees and expenses incurred in the performance of its duties as Indenture Trustee are clearly set forth in the Indenture which is, in substantial part, a contract between Golden Books and HSBC for services to be rendered by HSBC. These obligations are separate and distinct from Golden Books' obligations to the Holders under the Indenture and the Senior Notes.

B. The Debtor Has A Contractual Obligation To Pay The Fees And Expenses Of HSBC, Including The Fees And Expenses Of HSBC's Counsel PCS&F, As An Expense Of Administration

43. The interpretation of provisions in an indenture is a matter of basic contract law. See e.g., Jamie Securities v. The Ltd., Inc., 880 F.2d 1572, 1576 (2d Cir. 1989); Sharon Steel Corp. v. Chase Manhattan Bank, N.A., 691 F.2d 1039, 1049 (2d Cir. 1982), cert. denied, 460 U.S. 1012 (1983). In this case, the Indenture provides that New York law governs. See, Indenture Section 11.8 and Second Supplemental Indenture Section 3.3.

44. Under New York law if a contract is unambiguous on its face its proper construction is a question of law. Metropolitan Life Ins. Co., v. RJR Nabisco, Inc., 906 F.2d 884, 889 (2nd Cir. 1990). Contract language is unambiguous if it has a “definite and precise meaning, unattended by danger of misconception in the purport of the [contract] itself, and concerning which there is no reasonable basis for a difference of opinion.” Metropolitan Life, 906 F.2d at 889 (quoting Breed v. Insurance Co. of North America, 46 F.2d 351, 355, 413 N.Y.S. 2d 352, 255 (1978)). Where it is clear and specific, the words of a document will be given their plain, ordinary and usual meaning. The Indenture very clearly articulates the obligations of the Debtors to compensate HSBC and its counsel.

45. In order to issue the public debt to raise the fund for working capital purposes under an Indenture, the services of a trustee are required. 15 U.S.C. §77jjja(1) (“there shall at all times be one or more trustees under every indenture qualified or to be qualified pursuant to this subchapter.”). The issuing company, in this case Golden Books, aided by underwriters, formulated the indenture language prior to the solicitation of investors, which language included satisfaction of HSBC’s fees and expenses.

46. By accepting appointment as Indenture Trustee, HSBC reasonably relied upon, among other things, Section 6.6 of the Indenture which provides that the services provided by HSBC and the fees and expenses incurred would be afforded administrative priority under “bankruptcy law.” The Debtors relied on the provision of services by HSBC as Indenture Trustee both prior to and after the Petition Date. The continuation of the services rendered by HSBC as Indenture Trustee was accepted by the Debtors, who retained the benefits of those services. Where there is a provision in agreement that a debtor is liable for fees, a creditor is entitled to

recover all reasonable fees and expenses incurred in furtherance of the ultimate goal of enforcing that agreement pursuant to its terms. In re Tarricone, 83 B.R. 253, 254 (Bankr. S.D.N.Y. 1988).

47. It would be inequitable to deny HSBC remuneration for those services as contemplated by the parties: “[W]e must look not only to the benefit to the estate, but also to the consideration due the creditor for providing such benefit. Such consideration must encompass the entire bargain between the parties, *including performance due upon foreseen and bargained for contingencies.*” In re Santa Monica Beach Hotel, Ltd., 209 B.R. 722, 726 (Bankr. 9th Cir. 1997) (emphasis added).

48. This case follows the Supreme Court’s reasoning in In re N.L.R.B. v. Bildisco and Bildisco, 465 U.S. 513, 531 (1984) that “[i]f the trustee elects to continue to receive benefits from the other party to an executory contract pending a decision to reject or assume the contract, the trustee is obligated to pay for the reasonable value of those services . . . which, depending on the services of a particular contract, may be what is specified in the contract.” See also In Re Mammoth Mart Inc., 536 F.2d 950, 954 (1st Cir. 1976) (“[w]hen a debtor-in-possession . . . accepts services from a third party without paying for them, the debtor in possession has caused a legally cognizable injury, and the resulting claims . . . are entitled to first priority.”).

49. Notwithstanding the provisions of Section 503(b), “where fees are sought pursuant to a contractual right to payment, compensation is to be determined in accordance with the contractual provision.” In re W.T. Grant Co., 119 B.R. 898, 899 (S.D.N.Y. 1990). In Grant, the bankruptcy court ruled that the indenture trustee had to demonstrate a benefit to the estate in order to be compensated for postpetition services. The District Court reversed and held that where fees are sought pursuant to a contractual right to payment, compensation is to be determined pursuant to the contract, without the necessity for a showing of a benefit to the estate. W.T. Grant, 119

B.R. at 899 (citing In re New York, New Haven & Hartford R. Co., 421 F.Supp. 249, 257-58 (D. Conn. 1976), aff'd, 567 F.2d 166 (2d Cir. 1977), cert. denied sub nom. Zeldes v. Manufacturers Hanover Trust Co., 434 U.S. 833 (1977)). Notably, the contractual provision in W.T. Grant did not even address the indenture trustee's fees in the context of a bankruptcy proceeding, as HSBC's indenture does. Rather, the contractual provision in W.T. Grant merely provided that the trustee would be entitled to reasonable compensation, including the expenses and disbursements of its counsel. See W.T. Grant, 199 B.R. at 900.

50. The Second Circuit addressed the issue of a party's contractual right to attorney fees in a bankruptcy proceeding in In re United Merchants and Manufacturers, Inc., 674 F.2d 134 (2d Cir. 1982) and upheld a creditor's prepetition contractual right to attorney fees upon an event of default of the debtor's loan agreement. The loan agreement in United Merchants contained a provision that if the debtor defaulted on making any payment under the loan, it would pay the lender all costs and expenses of collection, including reasonable attorney fees. Id at 136-37.

51. In United Merchants, the Second Circuit rejected the debtor's argument to disregard the contract terms on the basis of policy considerations of equitable distribution to creditors underlying the bankruptcy law. Rather, because the payment provision was embedded in the terms of the contract, the Court reasoned:

When equally sophisticated parties negotiate a loan agreement that provides for recovery of collection costs upon default, courts should presume, absent a clear showing to the contrary, that the creditor gave value, in the form of a contract term favorable to the debtor or otherwise, in exchange for the collection costs provision. . . . Rather than providing an undeserved bonus for one creditor at the expense of others, allowing a claim under a collection costs provision merely effectuates the bargained-for terms of the loan contract.

United Merchants, 674 F.2d at 137. See also In re Hunter, 203 B.R. 150 (Bankr. W.D.Ark 1996).

52. Here, the Indenture’s language presents an even more compelling case for administrative priority treatment than in the W.T. Grant or United Merchants cases cited above. In this case, the parties explicitly set forth the treatment of the Indenture Trustee’s fees as administrative expenses pursuant to bankruptcy law.

53. Section 503(b)’s provisions addressing fees of indenture trustees upon making a substantial contribution to the bankruptcy case does not preclude an indenture trustee from asserting a contractual right to fees. The substantial contribution standard is wholly distinct from a party’s contractual right to fees and the two are not mutually exclusive. See In re Baldwin United Corp., 79 B.R. 321, 341 n.8 (Bankr. S.D. Ohio 1987) (“The question of whether an indenture trustee is entitled to reimbursement as a matter of contract is wholly separate from its entitlement under § 503(b)(3)(D) and §503(b)(4).”); In re Revere Copper and Brass, Inc., 60 B.R. 892, 895 (Bankr. S.D. N.Y. 1986) (“A party’s entitlement to reimbursement for expenses incurred and services rendered under Code § 503(b)(3), (4) and (5) does not depend on, and is independent of, any contractual entitlement to reimbursement....”). Having already negotiated the treatment of HSBC’s claim as Indenture Trustee in the context of a bankruptcy proceeding, HSBC should not be required to now meet a wholly different threshold for fee allowance.

54. Honoring the parties’ prepetition contractual agreement concerning the treatment of the Indenture Trustee’s fees and expenses is consistent with the jurisprudence under which courts have repeatedly upheld prepetition agreements that settle or fix a party’s rights in the event of a bankruptcy proceeding commenced by the other party. For example, in In re Orange Park South Partnership, 79 B.R. 79 (Bankr. M.D. Fla. 1987), the property owners entered into a prepetition agreement with their secured lender, in which the property owners acknowledged the amount of their debt to the lender, waived any and all defense to the mortgage, conceded there was no equity

in the property, and agreed that in the event a bankruptcy case was filed, the filing “would be admitted to be totally unfounded and that it was filed solely for the purpose of delay.” Thereafter, just days prior to a foreclosure sale, the property owners formed a partnership and filed a voluntary bankruptcy petition. The secured lender moved to dismiss the case for bad faith, based upon the terms of the prepetition stipulation. The court granted the motion, finding that the stipulation “put the Debtor in a virtually indefensible position” and that the Debtor’s case was “even worse than any other cases cited” because the property owners had already unmistakably bargained away their defenses to the motion. Id. at 82.

55. The Debtors’ pre-petition contractual obligation to HSBC as Indenture Trustee should be enforced in these bankruptcy cases. HSBC has continued to serve and satisfy its obligations under the Indenture, including providing notice to Holders of significant events, serving as a member of the Informal Noteholders Committee and other tasks. So should the Debtors’ obligations be enforced. These provisions should be given their full effect, and the fees and expense of HSBC as Indenture Trustee, which includes the fees and expenses of its counsel, should be paid in full.

VII.
THE FEES & EXPENSES OF HSBC AS INDENTURE TRUSTEE QUALIFY AS A SECURED CLAIM UNDER SECTION 506(b) AND SHOULD BE PAID IN FULL

56. Section 506 (b) of the Bankruptcy Code provides that “To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the

holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.”⁶

57. The Indenture, as amended and supplemented, is secured by certain assets of the Debtors, pursuant to a security agreement dated as of June 2, 1998. The Debtors have acknowledged that:

The Old Senior Notes are secured obligations of the Debtors pursuant to a security agreement dated as of June 2, 1998 (the “Security Agreement”). In particular, the Debtors believe that the Senior Note Trustee (for the benefit of all holders) holds valid, perfected and unavoidable (i) first priority liens and security interests (subject to certain permitted liens) in and upon (a) inventory, accounts receivable, chattel paper, documents and proceeds of the foregoing relating solely to Publishing’s Christmas Classics, Lone Ranger and Underdog properties (as such terms are defined in the Security Agreement), and the copyrights, copyright licenses, trademarks and trademark licenses associated therewith, and (b) certain personal property and fixtures owned by Publishing and located at the Debtors’ distribution center in Crawfordsville, Indiana, their manufacturing facility in Racine, Wisconsin, and their corporate headquarters in New York, New York; (ii) junior liens and security interests in and upon the NationsCredit Collateral (subject to the terms and conditions set forth therein); and (iii) a mortgage lien upon Publishing’s real property located in Crawfordsville, Indiana. In addition, the Old Senior Note Indenture Trustee and the Informal Senior Note Committee believe that the Senior Notes are entitled to be secured by a first priority lien on and security interest in a certain distribution agreement between Video and Sony Music and a related license agreement between Publishing and Video (collectively, the “Distribution Agreement”), and all rights to receive moneys due and to become due thereunder, and all proceeds thereof.

P. 11 of the Debtors’ Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Amended Joint Plan of Reorganization of the Debtors, dated May 13, 1999.

58. Pursuant to the Indenture governing the Senior Notes, HSBC timely filed a secured proof of claim on behalf of the Holders for the full amount due on the Senior Notes, as well as the fees and expenses of HSBC and PCS&F.

⁶ Section 506 (c) provides that “the trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim.”

59. As the holder of a secured claim timely filed, the Indenture Trustee is entitled to seek fees and reimbursement of its fees and expenses subject to the same standards of reasonableness set forth herein.

VIII. CONCLUSION

For the reasons stated above, HSBC respectfully requests that the Court allow its fees and expenses in the amount of \$95,884.27 as an administrative expense and grant such other and further relief as is just and proper.

Dated: September 23, 1999
New York, New York

PRYOR CASHMAN SHERMAN & FLYNN LLP,

By: s/Carole Neville
Carole Neville (CN 5733)
Karel S. Karpe (KSK (5801)

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New York, New York 10021
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Counsel to HSBC Bank USA, Indenture
Trustee of the 7.65% Senior Notes Due 2006

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

**CERTIFICATION IN SUPPORT OF
APPLICATION OF PRYOR CASHMAN SHERMAN & FLYNN LLP**

CAROLE NEVILLE certifies as follows under the penalty of perjury:

1. I am an attorney at law duly admitted to practice before this Court, and a member of the law firm of Pryor Cashman Sherman & Flynn LLP (“PCS&F”), which maintains offices for the practice of law at 410 Park Avenue, New York, New York 10017. I submit this certification in support of the Application of HSBC Bank USA, and PCS&F, as counsel for HSBC Bank USA for payment of professional fees and expenses accrued prior to September 1, 1999.
2. I am the professional designated by PCS&F with the responsibility for supervising the preparation of the application by PCS&F for the allowance of professional fees and expenses in these cases.
3. I have read the foregoing Application. To the best of my knowledge, information and belief, formed after reasonable inquiry, except as expressly set forth herein, the Application complies to the extent possible with the Guidelines for Fees and Disbursements for Professionals in Southern District of New York Bankruptcy Cases, as amended (“Fee Guidelines”).

4. Although HSBC in the ordinary course does not keep detailed time records, it has provided summations of time spent. PCS&F maintains detailed records of time billed. The invoices and time records are attached as Exhibits C and D respectively to the Application are true and correct copies of those records.

5. All disbursements for which reimbursement is sought in the Application are in accordance with the Fee Guidelines. PCS&F maintains detailed records of these disbursements. To the best of my knowledge, formed after reasonable inquiry, the Application does not include any profit in the amounts for which reimbursement is sought, nor is reimbursement sought for any overhead expenses. Copying is charged at \$.20 per page or less and less than \$1.00 per page for faxing. The Application does not seek any reimbursement for incoming facsimile transmissions.

6. Any charges for computerized research, overnight delivery and courier services, and telephone calls are in the amounts billed by third party vendors. Any charges for local transportation and car services are in the amounts billed by the third party vendors, and only for necessary late night transportation. Mass transit was used whenever possible and practicable.

7. The Application does not seek reimbursement for overtime, word processing or other internal staff services.

8. Certain fees and expenses of the PCS&F which were incurred during the Application Period may not have been entered into PCS&F's time and billing system as of the end of that period. In addition HSBC and PCS&F have continued to accrue fees and expenses since September 1, 1999 relating to this Application and the New Senior Note Documents. PCS&F and HSBC reserve the right to seek allowance of additional

compensation and reimbursement of expenses for services rendered after September 1, 1999.

9. PCS&F is simultaneously filing and serving the Application on the Debtors, counsel for the Debtors, the Office of the United States Trustee, and counsel for the Informal Noteholders Committee.

I certify that the following is true and correct.

Executed at New York, New York, on September 23, 1999.

s/Carole Neville
CAROLE NEVILLE (CN 5733)

PRYOR CASHMAN SHERMAN &
FLYNN LLP
410 Park Avenue
New York, New York 10022
(212) 421-4100
Counsel to HSBC Bank USA, as
Indenture Trustee

CERTIFICATE OF SERVICE

I certify that I caused true copies of the foregoing Application of HSBC Bank USA, Indenture Trustee, for Reimbursement of Expenses including Fees and Expenses of Counsel to HSBC Pursuant to Section 503 (b) and 507 of the Bankruptcy Code to be served on the following persons, by first class mail, postage prepaid, on September 24, 1999.

Office of the United States Trustee
Attn: Paul Schwartzberg, Esq.
80 Broad Street
New York, New York 10004-2209

Golden Books
888 Seventh Avenue, 40th Floor
New York, New York 10106
Attn: Philip Galanes, Esq.

Proskauer Rose LLP
1585 Broadway
New York, New York 10036-8299
Attn: Scott K. Rutsky, Esq.

Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
20th Floor
New York, New York
Attn: Fred Hodara, Esq.

Dated: New York, New York
September 24, 1999

s/George L. Medina
George L. Medina