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5 Attorneys for Debtor BCE West, L.P., et al.

6 **UNITED STATES BANKRUPTCY COURT**  
7 **DISTRICT OF ARIZONA**

8 ) Chapter 11  
9 In Re: )  
10 BCE WEST, L.P., et al., ) Case Nos. 98-12547 through  
11 Debtors. ) 98-12570-ECF-CGC  
12 ) Jointly Administered  
13 )  
14 ) **Final Application of Akin, Gump, Strauss,**  
15 ) **Hauer & Feld, L.L.P., Counsel to Debtors**  
16 ) **in Possession, for Allowance of**  
17 ) **Compensation for Services Rendered and**  
18 ) **Reimbursement of Expenses Incurred**  
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17 Akin, Gump, Strauss, Hauer & Feld, L.L.P. (“Akin Gump” or “Applicant”), counsel to BCE  
18 West, L.P., Boston Chicken, Inc., Mayfair Partners, L.P., BC Great Lakes, L.L.C., BC  
19 GoldenGate, L.L.C., B.C.B.M. Southwest, L.P., BC Boston, L.P., BC Superior, L.L.C., BC  
20 Heartland, L.L.C., BC Tri-States, L.L.C., Finest Foodservice, L.L.C., BC New York, L.L.C.,  
21 R&A Food Services, L.P., P&L Food Services, L.L.C., Mid-Atlantic Restaurant Systems, Inc.,  
22 BCI Massachusetts, Inc., BCI Southwest, Inc., BC Real Estate Investments, Inc., BCI Mayfair,  
23 Inc., Progressive Food Concepts, Inc., BCI R&A, Inc., BCI West, Inc., BCI Acquisition Sub,  
24 L.L.C., and Buffalo P&L Food Services, Inc., debtors and debtors in possession (the "Debtors")  
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1 as and for its final application for allowance of compensation for services rendered and  
2 reimbursement for expenses incurred (“Final Application”), respectfully states and represents:

3 **JURISDICTION**

4 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and  
5 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). The relief requested is  
6 authorized by 11 U.S.C. § 330(a).  
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8 **BACKGROUND FACTS**

9 2. On October 5, 1998, (the “Petition Date”), the Debtors filed voluntary petitions for  
10 relief under Chapter 11, Title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”),  
11 in the United States Bankruptcy Court for the District of Arizona (the “Court”). Pursuant to  
12 Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors operated their businesses and  
13 managed their property as debtors in possession.  
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15 3. On October 5, 1998, the Debtors submitted their Application for an Order  
16 Pursuant to Section 327(a) of the Bankruptcy Code Authorizing Akin, Gump, Strauss, Hauer &  
17 Feld, L.L.P. as Counsel for Debtors in Possession (“Application”). Applicant filed an Affidavit  
18 of Attorneys in Support of the Application (“Applicant’s Affidavit”).  
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20 4. On October 20, 1998, Applicant filed its Statement Under Rule 2016(b) of the  
21 Bankruptcy Rules and Section 329 of the Bankruptcy Code [DE 90] (“2016(b) Statement”).

22 5. By Order dated October 26, 1998, this Court approved the retention of Applicant  
23 as counsel for the Debtors [DE 190].

24 6. On October 27, 1998, this Court entered its order establishing a procedure for  
25 interim compensation and reimbursement of professionals [DE 200] (the “Interim Fee Order”).  
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1           7.       Copies of Applicant's Affidavit, the 2016(b) Statement, the Retention Order, and  
2 the Interim Fee Order were included with the First Application, and they have not been  
3 duplicated with this Final Application for the sake of brevity and conservation. Akin Gump has  
4 no agreement of any kind, express or implied, to divide with any other person or entity any  
5 portion of the compensation sought or to be received by it in these cases.  
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7           8.       Since October 5, 1998, Applicant has represented the Debtor in the performance  
8 of the Debtors' duties and the exercise of the Debtors' powers all as specified in §1103(c) of the  
9 Bankruptcy Code. A more descriptive explanation of services provided and work done is set  
10 forth below and is fully detailed in the billing statements attached as Exhibits A and F.

11           9.       This is the final application Applicant will file with the Court for allowance of  
12 compensation and reimbursement of expenses for services rendered to the Debtors. In this final  
13 application Applicant requests:  
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- 15                   a.       Final approval of all fees and expenses approved by the Court and  
16                   paid by the Debtors on an interim basis;
- 17                   b.       Fees and expenses paid by the Debtors pursuant to the Interim Fee  
18                   Order, but not yet approved by the Court; and
- 19                   c.       Fees and expenses that have neither been paid by the Debtors nor  
20                   approved by the Court to date.

21           10.       Fees and expenses approved by Court order on an interim basis are as follows: (a)  
22 on March 15, 1999, Akin Gump filed its First Application for Allowance of Interim  
23 Compensation for Services Rendered and Reimbursement of Expenses Incurred for the period  
24 from October 1, 1998, through January 31, 1999 (the "First Application"), seeking an allowance  
25 of compensation in the amount of \$673,327 and reimbursement of expenses in the amount of  
26 \$88,568.33. On April 27, 1999, this Court entered and order awarding Akin Gump compensation

1 and reimbursement of expenses in the amounts requested; (b) on July 15, 1999, Akin Gump filed  
2 its Second Application for Allowance of Interim Compensation for Services Rendered and  
3 Reimbursement of Expenses Incurred for the period from February 1, 1999, through May 31,  
4 1999 (the "Second Application"), seeking an allowance of compensation in the amount of  
5 \$439,259.25 and reimbursement of expenses in the amount of \$62,075.29. On August 24, 1999,  
6 this Court entered an order awarding Akin Gump compensation and reimbursement of expenses  
7 in the amounts requested; (c) on November 15, 1999, Akin Gump filed its Third Application for  
8 Allowance of Interim Compensation for Services Rendered and Reimbursement of Expenses  
9 Incurred for the period from June 1, 1999, through September 30, 1999 (the "Third  
10 Application"), seeking an allowance of compensation in the amount of \$525,337.50 and  
11 reimbursement of expenses in the amount of \$68,904.38. On December 14, 1999, this Court  
12 entered an order awarding Akin Gump compensation and reimbursement of expenses in the  
13 amounts requested; and (d) on March 15, 2000, Akin Gump filed its Fourth Application for  
14 Allowance of Interim Compensation for Services Rendered and Reimbursement of Expenses  
15 Incurred for the period from October 1, 1999, through January 31, 2000 (the "Fourth  
16 Application"), seeking an allowance of compensation in the amount of \$528,167.50 and  
17 reimbursement of expenses in the amount of \$26,110.81. On April 25, 2000, this Court entered  
18 an order awarding Akin Gump compensation and reimbursement of expenses in the amounts  
19 requested.  
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### 23 **COMPENSATION AND REIMBURSEMENT REQUESTED BY AKIN GUMP**

24 11. In addition to the periods included in all prior interim applications, this final  
25 application covers the period from February 1, 2000, through May 26, 2000 (the "Final Period").  
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1           12.    Akin Gump requests as its final allowance of compensation the sum of  
2 \$2,908,300.75, which includes \$742,209.50 for the four months included in the Final Period.

3           13.    The total amount requested for the Final Period represents a “lodestar” computation  
4 using the firm’s normal hourly billing charges in effect during the Final Period for an aggregate of  
5 2,491.6 hours of service. For the Final Period, the average billing rate is \$346.44 per hour, which is  
6 attributable to the extensive amount of senior partner time required by work performed during the  
7 Final Period. A detailed description of time spent and services rendered by each attorney and  
8 paraprofessional in each of the major issue areas in which Akin Gump has performed services  
9 during the Final Period is set forth on Exhibits A and F and summarized in paragraphs 30 and 39  
10 below. Detailed billing reports for the First, Second, Third, and Fourth Applications are attached to  
11 the First, Second, Third, and Fourth Applications, respectively, and incorporated herein by  
12 reference.

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15           14.    In addition, Akin Gump requests final approval of the reimbursement of its actual  
16 and necessary disbursements made during these cases in the sum of \$338,862.47, which includes  
17 \$93,206.66 for the Final Period, all of which disbursements were incurred in connection with the  
18 rendering of services to Debtors. Schedules of disbursements incurred during the Final Period are  
19 attached hereto as Exhibits D and H.<sup>1</sup> Schedules of disbursements for the First, Second, Third, and  
20 Fourth Applications are attached to the First, Second, Third, and Fourth Applications, respectively,  
21 and incorporated herein by reference.

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<sup>1</sup> Because documentation for some expenses incurred during this Final Period has not yet been processed, Akin Gump reserves the right to request reimbursement of such expenses upon invoice to the Plan Trustee.



1 financing in the amount of \$70 million which obligation is secured by liens and security interests in  
2 substantially all of the Debtors' assets.

3           20. During the Final Period, the Debtors filed pleadings concerning (a) objections to  
4 disclosure statement and plan; (b) supplements to disclosure statement and amendments to plan;  
5 (c) a compromise controversy regarding Nedlog's administrative claim; (d) fourth interim fee  
6 application; (e) extensions of exclusivity periods; (f) extensions of time to assume or reject  
7 nonresidential real property leases; (g) fixing administrative bar date for certain claimants; (h)  
8 payment of administrative expenses; (i) rejecting executory contracts; (j) discovery disputes with  
9 creditors' committee; (k) rejection of Support Center Lease with Einstein/Noah Bagel Corp.; (l)  
10 automatic stay enforcement and prohibiting termination of lease of nonresidential real property;  
11 (m) approval of global settlement of plan; (n) approval to withdraw and change plan rejection; (o)  
12 approval of modification of accepted plan before confirmation; (p) assumption and assignment of  
13 leases including those previously assumed; and (q) final rejection of leases.

14           21. Since the commencement of the Debtors' cases, the Debtors have filed fourteen  
15 separate motions to reject approximately 292 leases that were burdensome to the Debtors' estates,  
16 (ii) twelve motions to sell surplus real property assets, (iii) seven motions to assume amended  
17 nonresidential real property leases, and settle, compromise and release all claims between the  
18 respective lessors and the Debtors. With respect to each lease covered by these motions, the  
19 Debtors have received both cash consideration and a release from all landlord claims.  
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21           22. Each of the referenced rejected store leases is related to discontinued restaurant  
22 operations in approximately 292 store locations. As a result of these store closures, the Debtors  
23 have sold and are attempting to sell equipment no longer used in the Debtors' business operation.  
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1           23.     Certain of the Debtors own the real estate on which restaurant operations are  
2 conducted. A few of these locations have also been closed. The Debtors have marketed these  
3 properties, and have sought Court approval to sell some of these real property assets.

4           24.     On January 6, 2000, the Debtors filed the “Debtors’ Plan Filed January 6, 2000”  
5 (the “Original Plan”). The Original Plan was amended several times and the final Third  
6 Amended Plan was filed on May 3, 2000. On May 15, 2000, the Third Amended Plan was  
7 confirmed (the “Confirmation Order”).

8           25.     On April 28, 2000, the 1995 Lenders, the 1996 Lenders, the Creditors’  
9 Committee, the Debtors and GRO, and GRO’s parent, McDonald’s Corporation (“McDonald’s”),  
10 entered into the Global Settlement providing for the amendment of the Original Plan. The Third  
11 Amended Plan contained the modifications contemplated by the Global Settlement. The salient  
12 Amended Plan contained the modifications contemplated by the Global Settlement. The salient  
13 terms of the settlement are as follows:

14           a.     The Allowed Secured Claims of the 1995 Lenders will be the  
15 amount of all adequate protection payments made during these chapter 11 cases  
16 plus \$6 million, and \$6 million will be paid in full in cash on the Effective Date.  
17 This will constitute a settlement of: (i) all potential claims against the 1995  
18 Lenders to recoup adequate protection payments previously made or to surcharge  
19 the 1995 Collateral under Bankruptcy Code §506(c), and (b) the 1995 Lenders’  
20 claims to all existing 1995 Collateral, whether transferred to the Buyer or retained  
21 as part of the Estates;

22           b.     The 1996 Lenders’ Allowed Secured Claim was also compromised  
23 in the amount set forth in Paragraph III.B.2 of the Third Amended Plan;

24           c.     The GRO agreed to increase the purchase price from \$173.5 million  
25 to \$176.15 million, a net increase of \$2.65 million;

26           d.     The Administrative Claim of the Indenture Trustees was  
compromised at \$150,000; and

          e.     The 1996 Lenders agreed to pay from the proceeds of the 1996  
Collateral to the Unsecured Classes (general unsecured creditors and Debentures,  
but excluding any deficiency Claims of the 1995 Lenders or the 1996 Lenders) \$2  
million from the Cash on the Effective Date and the first \$1 million of Estate Funds  
realized by the Plan Trustee. The 1996 Lenders and the 1995 Lenders have waived



1 their right to share in that distribution and have waived their subordination rights  
2 with respect to that distribution.

3 26. The Third Amended Plan provided for the sale of substantially all of the Debtors'  
4 assets free and clear of all Liens, Claims, and Interests. Additionally, the Third Amended Plan  
5 enhanced the treatment of the 1995 Lenders, the holders of Allowed Claims in the Unsecured  
6 Classes (other than the deficiency Claims of the 1995 Lenders and the 1996 Lenders).

7 27. Pursuant to 11 U.S.C. § 365, the Debtors were authorized to assume and assign to  
8 GRO executory contracts that were not rejected under the Third Amended Plan. The Debtors' were  
9 also authorized to assume and assign leases to GRO and assign leases to GRO that had been  
10 previously assumed.

11 28. Following the entry of the Confirmation Order, Akin Gump completed  
12 negotiations and finalized the numerous documents necessary to consummate the Third Amended  
13 Plan and close under the related agreements. Akin Gump coordinated various parties and their  
14 respective actions necessary to satisfy conditions for closing under the Third Amended Plan and  
15 the related agreements.

16 29. The Third Amended Plan became effective as of May 26, 2000. Since that time,  
17 the Plan Trustee, along with the assistance of Akin Gump have been administering the Third  
18 Amended Plan.

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21 **SERVICES PERFORMED – 065184.0007**

22 30. The professional services performed by Applicant on behalf of Debtors between  
23 February 1, 2000 and May 26, 2000, are set out below in a summary manner into the following  
24 discrete categories, which reflect the type of services performed on behalf of Debtors. These  
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1 categories were established consistent with the guidelines of the United States Trustee. *See also*  
2 Exhibit E.

3 A. **Case Administration – B110**: this category relates to the following  
4 services:

- 5 (1) preparation of pleadings relating to general operating matters of the  
6 Debtors, hearing materials, preparation for and attendance at hearings  
7 in Court as required;
- 8 (2) review of all correspondence and pleadings filed in the case, their  
9 status and response deadlines;
- 10 (3) review and maintenance of the case docket and service lists to assure  
11 proper service of all pleadings, notification of all Court settings, and  
12 assurance of proper notice to creditors when required; and
- 13 (4) respond to general creditor inquiries about case status and their  
14 claims.

15 Fees in this category total \$18,905.50, representing 73.7 hours of time spent. The following  
16 is a summary of the timekeepers for this category:

<b><u>Timekeeper</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
H.R. Stroube, partner	3.60	\$475.00	\$1,710.00
J.C. Krause, partner	0.50	\$450.00	\$225.00
H.R. Stroube, partner	17.70	\$430.00	\$7,611.00
J.C. Krause, partner	2.80	\$390.00	\$1,092.00
G.C. Laswell, partner	3.60	\$365.00	\$1,314.00
S.M. Venus, partner	6.80	\$365.00	\$2,482.00
G.K. Jones, associate	1.50	\$215.00	\$322.50
L.B. DeWitt, legal assistant	5.70	\$120.00	\$684.00
L.B. DeWitt, legal assistant	31.50	\$110.00	\$3,465.00
<b>TOTALS:</b>	<b>73.70</b>		<b>\$18,905.50</b>

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B. **Asset Analysis or Recovery – B120**: this category relates to the following services:

- (1) communications regarding Boston West rent issues.

Fees in this category total \$78, representing 0.2 hours of time spent. The following is a summary of the timekeepers for this category:

<b><u>Timekeeper</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
J.C. Krause, partner	0.20	\$390.00	\$78.00
<b>TOTALS:</b>	<b>0.20</b>		<b>\$78.00</b>

C. **Asset Disposition – B130**: this category relates to the following services:

- (1) research and preparation of motions and orders to approve the sale of real property outside the ordinary course of business free and clear of liens;
- (2) communications with client regarding motions to sell property;
- (3) analysis of Platinum asset disposition;
- (4) multiple client conferences regarding potential sale of ENBC stock;
- (5) analysis of new structure for ENBC;
- (6) research and prepare motion to sell ENBC stock; and
- (7) research regarding sale procedures and fiduciary duties.

Fees in this category total \$49,638.50, representing 160.4 hours of time spent. The following is a summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	6.60	\$430.00	\$2,838.00
C. Schenker, partner	59.10	\$400.00	\$23,640.00
J.C. Krause, partner	29.40	\$390.00	\$11,466.00
N.K. Friday, partner	0.60	\$365.00	\$219.00
J.P. Ryan, partner	16.00	\$310.00	\$4,960.00
G.K. Jones, associate	2.90	\$215.00	\$623.50
A.W. Swisher, associate	0.30	\$190.00	\$57.00
S. Kruger, associate	38.00	\$135.00	\$5,130.00
L.B. DeWitt, legal assistant	3.50	\$110.00	\$385.00
C. Sivills, legal assistant	4.00	\$80.00	\$320.00
<b>TOTALS:</b>	<b>160.40</b>		<b>\$49,638.50</b>

D. **Relief from Stay/Adequate Protection Proceedings – B140**: this category relates to the following services:

- (1) responding to numerous inquiries from plaintiffs as to the effect of the bankruptcy filing to their cases and the procedures for lifting the automatic stay;
- (2) verify insurance coverage for requests to lift the automatic stay;
- (3) client conferences regarding strategy pertaining to lift stay violations and default judgments;
- (4) review and respond to lift stay motions filed by personal injury movants; and
- (5) preparation of motion to impose sanctions on REW.

Fees in this category total \$3,231, representing 20.4 hours of time spent. The following is a summary of the timekeepers for this category:

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<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
J.C. Krause, partner	1.80	\$450.00	\$810.00
H.R. Stroube, partner	0.70	\$430.00	\$301.00
S.M. Venus, partner	0.40	\$365.00	\$146.00
J.M. Abell, associate	0.40	\$180.00	\$72.00
L.B. DeWitt, legal assistant	2.10	\$120.00	\$252.00
L.B. DeWitt, legal assistant	15.00	\$110.00	\$1,650.00
<b>TOTALS:</b>	<b>20.40</b>		<b>\$3,231.00</b>

E. **Meetings of and Communications with Creditors – B150**: this category relates to the following services:

- (1) communications regarding new equity committee;
- (2) participation in board meetings; and
- (3) research regarding fiduciary duties.

Fees in this category total \$5,801, representing 19.1 hours of time spent. The following is a summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	0.70	\$430.00	\$301.00
C. Schenker, partner	9.40	\$400.00	\$3,760.00
J.P. Ryan, partner	3.00	\$310.00	\$930.00
S. Kruger, associate	6.00	\$135.00	\$810.00
<b>TOTALS:</b>	<b>19.10</b>		<b>\$5,801.00</b>

1 F. **Fee/Employment Applications – B160:** this category relates to the  
2 following services:

- 3 (4) Review of BMAC application;  
4 (5) communications with Huntley Financial regarding filing of fee  
5 application;  
6 (6) preparation of interim fee applications; and  
7 (7) review of monthly invoices from other case professionals and bank  
8 professionals.

9 Fees in this category total \$4,671.50, representing 34.3 hours of time spent. The following  
10 is a summary of the timekeepers for this category:

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<b><u>Timekeeper</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
H.R. Stroube, partner	0.30	\$475.00	\$142.50
J.C. Krause, partner	0.20	\$450.00	\$90.00
H.R. Stroube, partner	1.20	\$430.00	\$516.00
J.C. Krause, partner	1.00	\$390.00	\$390.00
L.B. DeWitt, legal assistant	5.70	\$120.00	\$684.00
L.B. DeWitt, legal assistant	25.90	\$110.00	\$2,849.00
<b>TOTALS:</b>	<b>34.30</b>		<b>\$4,671.50</b>

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19 G. **Avoidance Actions Analysis – B180:** this category relates to the following  
20 services:

- 21 (1) review of research regarding recovery of payments from insiders,  
22 Colorado law, fiduciary duties, preferential payments, fraudulent  
23 transfers to directors, and accountant malpractice;  
24 (2) preparation of litigation report;  
25 (3) meeting with Plan Trustee regarding potential causes of action; and  
26 (4) analysis of insider transfers and vendor payments.

1 Fees in this category total \$68,424.50, representing 233.6 hours of time spent. The  
 2 following is a summary of the timekeepers for this category:  
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<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
J.C. Krause, partner	4.70	\$390.00	\$1,833.00
S.M. Venus, partner	115.90	\$365.00	\$42,303.50
B. Carmichael, counsel	15.00	\$275.00	\$4,125.00
A.K. Edwards, counsel	54.40	\$255.00	\$13,872.00
A.W. Swisher, associate	0.20	\$190.00	\$38.00
J.M. Abell, associate	1.10	\$180.00	\$198.00
J.S. Barrick, associate	5.70	\$180.00	\$1,026.00
T.T. McKenna, associate	29.30	\$140.00	\$4,102.00
S. Kruger, associate	6.00	\$135.00	\$810.00
J.A. Ulicki, legal assistant	1.30	\$90.00	\$117.00
<b>TOTALS:</b>	<b>233.60</b>		<b>\$68,424.50</b>

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 15 G. Assumption/Rejection of Leases and Contracts – B185: this category  
 16 relates to the following services:

- 17 (1) research regarding post-confirmation assumption and rejection of  
 18 leases and amending previously assumed agreements;
- 19 (2) preparation of motions and orders to reject executory contracts,  
 20 motion to extend deadline to assume or reject leases; assumption of  
 21 amended employment agreement, reject leases, assume and assign  
 22 leases, and assign leases previously assumed;
- 23 (3) prepare for and attend hearings as required;
- 24 (4) review and respond to objections to pending motions;
- 25 (5) communicate with client and landlords regarding landlords and lease  
 26 rejection and assumption issues;
- (6) communications with committee, bank group and landlords regarding  
 fifth motion to extend time to assume or reject leases;

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- (7) review and respond to Taubman motion to compel assumption or rejection of lease; and
- (8) research and communications with client and GRO regarding lease assumption and assignment issues.

Fees in this category \$62,903.50, representing 214.8 hours of time spent. The following is a summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	4.70	\$475.00	\$2,232.50
J.C. Krause, partner	28.90	\$450.00	\$13,005.00
H.R. Stroube, partner	4.50	\$430.00	\$1,935.00
S.M. Venus, partner	25.20	\$425.00	\$10,710.00
C. Schenker, partner	2.40	\$400.00	\$960.00
J.C. Krause, partner	50.30	\$390.00	\$19,617.00
B. Carmichael, counsel	1.30	\$275.00	\$357.50
G.K. Jones, associate	28.10	\$215.00	\$6,041.50
L.B. DeWitt, legal assistant	41.10	\$120.00	\$4,932.00
L.B. DeWitt, legal assistant	28.30	\$110.00	\$3,113.00
<b>TOTALS:</b>	<b>214.80</b>		<b>\$62,903.50</b>

H. **Other Contested Matters – B190:** this category relates to the following services:

- (1) review of H&A complaint; and
- (2) prepare for monthly hearing including contested matters.

Fees in this category total \$3,631.50, representing 9.7 hours of time spent. The following is a summary of the timekeepers for this category:



<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	0.40	\$475.00	\$190.00
H.R. Stroube, partner	1.20	\$430.00	\$516.00
J.C. Krause, partner	0.20	\$390.00	\$78.00
S.M. Venus, partner	7.50	\$365.00	\$2,737.50
B. Carmichael, counsel	0.40	\$275.00	\$110.00
<b>TOTALS:</b>	<b>9.70</b>		<b>\$3,631.50</b>

I. **Non-Working Travel – B195:** this category relates to the following services:

- (1) travel to/from Phoenix, Arizona for attendance at Court hearings;
- (2) travel to/from Golden, Colorado for client meetings and discovery matters;
- (3) travel to/from Washington, D.C. for depositions; and
- (4) travel to/from Boston, Massachusetts for depositions.

Fees in this category total \$20,016, representing 52.3 hours of time spent. Non-working travel time was billed at one-half the time actually expended. The following is a summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	9.60	\$475.00	\$4,560.00
H.R. Stroube, partner	25.20	\$430.00	\$10,836.00
S.M. Venus, partner	6.00	\$365.00	\$2,190.00
J.A. Jansen, counsel	8.00	\$225.00	\$1,800.00
J.S. Barrick, associate	3.50	\$180.00	\$630.00
<b>TOTALS:</b>	<b>52.30</b>		<b>\$20,016.00</b>

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J. **Business Operations – B210**: this category relates to the following services:

- (1) communications with client regarding current performance;
- (2) analysis and preparation of documents regarding the dissolution of BC Southwest Beverage Corporation;
- (3) preparation of franchise taxes;
- (4) detail to operational matters; and
- (5) conferences with major vendors to discuss contract issues.

Fees in this category total \$1,914, representing 10.6 hours of time spent. The following is a summary of the timekeepers for this category:

<b><u>Timekeeper</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
H.R. Stroube, partner	1.60	\$475.00	\$760.00
H.R. Stroube, partner	0.20	\$430.00	\$86.00
J.C. Krause, partner	0.10	\$390.00	\$39.00
J.P. Ryan, partner	1.00	\$310.00	\$310.00
D. Viklund, associate	0.20	\$290.00	\$58.00
W. Marshall, associate	1.00	\$135.00	\$135.00
L.B. DeWitt, legal assistant	0.20	\$110.00	\$22.00
L. Murphy, legal assistant	6.30	\$80.00	\$504.00
<b>TOTALS:</b>	<b>10.60</b>		<b>\$1,914.00</b>

K. **Employee Benefits/Pension – B220**: this category relates to the following services:

- (1) preparation of open letter to employees; and
- (2) client conferences regarding employee issues.

1 Fees in this category total \$445, representing 1.1 hours of time spent. The following is a  
 2 summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	0.40	\$430.00	\$172.00
J.C. Krause, partner	0.70	\$390.00	\$273.00
<b>TOTALS:</b>	<b>1.10</b>		<b>\$445.00</b>

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 8 L. **Financing/Cash Collections – B230:** this category relates to the following  
 9 services:

- 10 (1) negotiate and prepare DIP loan agreement amendments and adequate  
 11 protection agreements; and
- 12 (2) preparation of motions to amend DIP loan agreements;
- 13 (3) prepare for and attendance at hearings regarding DIP amendments;  
 14 and
- 15 (4) meetings with bank group regarding the DIP loan agreement and  
 16 restructuring issues.

17 Fees in this category total \$3,977, representing 11 hours of time spent. The following is a  
 18 summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	5.70	\$430.00	\$2,451.00
C. Schenker, partner	0.20	\$400.00	\$80.00
J.C. Krause, partner	0.90	\$390.00	\$351.00
J.P. Ryan, partner	0.80	\$310.00	\$248.00
B. Carmichael, counsel	2.20	\$325.00	\$715.00
L.B. DeWitt, legal assistant	1.20	\$110.00	\$132.00
<b>TOTALS:</b>	<b>11.00</b>		<b>\$3,977.00</b>

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N. **Real Estate - B250**: this category relates to the following services:

- (1) discussions regarding releases for First Union.

Fees in this category total \$14, representing 0.2 hours of time spent. The following is a summary of the timekeepers for this category:

<b><u>Timekeeper</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
A. Strick, legal assistant	0.20	\$70.00	\$14.00
<b>TOTALS:</b>	<b>0.20</b>		<b>\$14.00</b>

O. **Board of Directors Matters – B260**: this category relates to the following services:

- (1) prepare for and participate in Board of Directors’ meetings.

Fees in this category total \$2,670, representing 6.6 hours of time spent. The following is a summary of the timekeepers for this category:

<b><u>Timekeeper</u></b>	<b><u>Hours</u></b>	<b><u>Rate</u></b>	<b><u>Value</u></b>
J.C. Krause, partner	0.60	\$450.00	\$270.00
H.R. Stroube, partner	4.30	\$430.00	\$1,849.00
J.C. Krause, partner	0.30	\$390.00	\$117.00
J.P. Ryan, partner	1.40	\$310.00	\$434.00
<b>TOTALS:</b>	<b>6.60</b>		<b>\$2,670.00</b>

P. **Claims Administration and Objections – B310**: this category relates to the following services:

- (1) review and update claims docket;
- (2) client conferences regarding EEOC claims and update EEOC lists;

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- (3) preparation of motion fixing administrative bar date for certain claimants and responding to objections
- (4) coordinate publication and service of administrative bar date order;
- (5) analysis of administrative claims filed;
- (6) preparation of motion to settle administrative claim with Tolson LaFont;
- (7) communications with creditors regarding administrative bar date; and
- (8) detailed review of administrative claims submitted by BMAC, Liftpak, South Trail Village Associate, and the City and County of Denver.

Fees in this category total \$31,527.5, representing 112.3 hours of time spent. The following is a summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	0.80	\$475.00	\$380.00
J.C. Krause, partner	3.90	\$450.00	\$1,755.00
H.R. Stroube, partner	8.40	\$430.00	\$3,612.00
S.M. Venus, partner	4.30	\$425.00	\$1,827.50
J.C. Krause, partner	19.30	\$390.00	\$7,527.00
S.M. Venus, partner	23.90	\$365.00	\$8,723.50
B. Carmichael, counsel	4.50	\$325.00	\$1,462.50
B. Carmichael, counsel	2.20	\$275.00	\$605.00
J.L. Gold, associate	0.80	\$260.00	\$208.00
A.K. Edwards, counsel	0.30	\$255.00	\$76.50
T. Peterson, associate	1.00	\$240.00	\$240.00
G.K. Jones, associate	3.50	\$215.00	\$752.50
L.B. DeWitt, legal assistant	2.40	\$120.00	\$288.00
L.B. DeWitt, legal assistant	37.00	\$110.00	\$4,070.00
<b>TOTALS:</b>	<b>112.30</b>		<b>\$31,527.50</b>

1 Q. **Plan and Disclosure Statement – B320:** this category relates to the  
2 following services:

- 3 (1) research regarding plan requirements, attorney/client privilege,  
4 attorney work product, objections to plan, and indemnification issues;
- 5 (2) preparation of disclosure statement, plan of reorganization and related  
6 appendices, supplements and amendments; and
- 7 (3) preparation of motion to extend exclusivity, pretrial statement,  
8 pretrial brief, and responses to objections;
- 9 (4) negotiations with bank group regarding plan terms;
- 10 (5) preparation and maintenance of service lists for noticing disclosure  
11 statement hearing notice and sending out ballots;
- 12 (6) communications with creditors and equity holders regarding  
13 disclosure statement and plan and send out packages to parties  
14 providing written request;
- 15 (7) details to ballot tabulation issues;
- 16 (8) analysis of tax issues under plan;
- 17 (9) attention to dissolution issues;
- 18 (10) review expert reports
- 19 (11) prepare for and attend hearings and depositions as required;
- 20 (12) review and responding to discovery requests from creditors'  
21 committee;
- 22 (13) formulate litigation trust budget;
- 23 (14) analysis of utility bond treatment under plan;
- 24 (15) negotiate Global Settlement;
- 25 (16) revise transfer agreement;
- 26 (17) conferences with Plan Trustee regarding implementation of plan;

1 (18) preparation of confirmation order and findings of fact; and

2 (19) detail to closing issues.

3 Fees in this category total \$460,776.50, representing 1,521.3 hours of time spent. The  
4 following is a summary of the timekeepers for this category:  
5

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
H.R. Stroube, partner	54.20	\$475.00	\$25,745.00
J.C. Krause, partner	119.70	\$450.00	\$53,865.00
H.R. Stroube, partner	175.20	\$430.00	\$75,336.00
M.S. Stamer, partner	1.50	\$425.00	\$637.50
S.M. Venus, partner	29.80	\$425.00	\$12,665.00
C. Schenker, partner	144.00	\$400.00	\$57,600.00
J.C. Krause, partner	216.50	\$390.00	\$84,435.00
G.C. Moorefield, partner	14.50	\$375.00	\$5,437.50
G.C. Laswell, partner	24.90	\$365.00	\$9,088.50
S.M. Venus, partner	49.10	\$365.00	\$17,921.50
L.S. Broyhill, partner	2.00	\$340.00	\$680.00
B. Carmichael, counsel	12.60	\$325.00	\$4,095.00
J.P. Ryan, partner	24.30	\$310.00	\$7,533.00
B. Carmichael, counsel	4.00	\$275.00	\$1,100.00
J.L. Gold, associate	0.40	\$260.00	\$104.00
R.M. Aronson, partner	0.60	\$255.00	\$153.00
M.C. Elrod, associate	0.60	\$240.00	\$144.00
T. Peterson, associate	20.00	\$240.00	\$4,800.00
G.K. Jones, associate	3.90	\$230.00	\$897.00
J.A. Jansen, counsel	59.30	\$225.00	\$13,342.50
J.L. Gold, associate	96.60	\$220.00	\$21,252.00
G.K. Jones, associate	63.40	\$215.00	\$13,631.00
G.V. Brown, associate	11.70	\$195.00	\$2,281.50
J.S. Barrick, associate	46.60	\$180.00	\$8,388.00
K.M. Aurzada, associate	19.40	\$180.00	\$3,492.00
Y.D. McGill, associate	2.40	\$175.00	\$420.00
T.T. McKenna, associate	23.80	\$140.00	\$3,332.00
S. Kruger, associate	1.70	\$135.00	\$229.50
W. Marshall, associate	1.00	\$135.00	\$135.00

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
L.B. DeWitt, legal assistant	43.20	\$120.00	\$5,184.00
L.B. DeWitt, legal assistant	216.10	\$110.00	\$23,771.00
M.E. Lowery, legal assistant	1.60	\$110.00	\$176.00
J.A. Ulicki, legal assistant	1.00	\$90.00	\$90.00
S. Augusta, legal assistant	0.40	\$85.00	\$34.00
C. Sivills, legal assistant	29.00	\$80.00	\$2,320.00
D. Clark, legal assistant	4.50	\$80.00	\$360.00
T.L. Harris, paraprofessional	0.40	\$60.00	\$24.00
T.L. Harris, paraprofessional	1.40	\$55.00	\$77.00
<b>TOTALS:</b>	<b>1521.30</b>		<b>\$460,776.50</b>

R. **Litigation – Analysis/Strategy – L120:** this category relates to the following services:

- (1) research regarding implied duty of good faith; and
- (2) analysis of potential litigation matter and preparation of complaint.

Fees in this category total \$220.50, representing 1.2 hours of time spent. The following is a summary of the timekeepers for this category:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
A.M. Hebert, counsel	0.70	\$215.00	\$150.50
L.G. Fitzpatrick, associate	0.50	\$140.00	\$70.00
<b>TOTALS:</b>	<b>1.20</b>		<b>\$220.50</b>

**EXPENSES – 065184.0007**

31. It has been necessary for the Applicant law firm to incur and pay in advance out-of-pocket expenses in connection with its representation of the Debtor in this case. Careful records of those expenditures have been maintained and the expenses incurred are shown in Exhibit D to this Final Application.



1 32. Photocopies made at Applicant's offices are charged at \$.25 per copy. However,  
2 whenever possible large copy projects are sent to Applicant's offsite contract reproduction center  
3 and are charged at between \$.12 and \$.15 per copy. Telecopy communication is utilized on those  
4 occasions when written communication must be immediate and oftentimes it is necessary to  
5 quickly transfer information. Due to cost and timing, it is not only faster but often more  
6 economical to telecopy a few pages rather than to send it by courier or overnight, or for Applicant  
7 to communicate it orally. Telecopies sent locally are charged at the flat rate of \$.50 per page for  
8 outgoing telecopies only. Charges for long distance telecopies were billed at \$ 1.50 per page.  
9 There is no charge for incoming telecopies.

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11 33. Akin Gump has made every effort to minimize its expenses in this case. It is  
12 submitted that all of these expenses were reasonable, necessary, and the same as Applicant  
13 customarily charges its other clients. Applicant submits that it is entitled approval of the  
14 reimbursement paid in the sum of \$93,046.48.  
15

16 **CASE STATUS – 065184.0008**

17 34. Boston West, L.L.C. ("BW"), a Delaware limited liability company and a BCI  
18 franchisee, filed a voluntary Chapter 11 petition in the Central District of California, Santa Ana  
19 Division, on November 9, 1998. BCI was the largest creditor in the BW bankruptcy case.  
20 Applicant established a distinct billing number and file for legal services rendered in connection  
21 with the BW case. As of the petition date, BCI was owed approximately \$94,400,000.00  
22 primarily as a result of loans made by BCI to BW and franchise agreements between BCI and  
23 BW. BCI holds first liens on substantially all of BW's assets. BCI originally pledged its claims  
24 against BW as collateral to BCI's lenders and thereafter sold these claims to GRO as part of the  
25 sale pursuant to the Third Amended Plan.  
26

1           35.     After the filing of the BW Chapter 11, BW, BCI, BCI's lenders and CKE were  
2 involved in several matters pertaining to the case, including BW plan of reorganization  
3 negotiations. BCI and members of Applicant have been involved in matters relating to use of  
4 cash collateral and adequate protection, marketing and rejection of leases, property disposition  
5 and protection and transition of operational services.  
6

7           36.     Applicant continued to monitor BW's Chapter 11 case for BCI, in its capacity as  
8 the largest creditor of BW. During the Final Period Applicant has reviewed several BW motions  
9 to engage in transactions outside the ordinary course of business and has provided BCI with  
10 advice regarding the potential impact of such motions. BCI and Applicant have been active in  
11 the matters relating to lease issues.  
12

13           37.     BCI and Applicant engaged in extensive negotiations over the terms of a plan for  
14 BW before BCI negotiated the Asset Purchase Agreement with GRO. BW filed a plan based on  
15 those negotiations and Applicant reviewed that plan and the related disclosure statement. Before  
16 the hearing on approval of BW's disclosure statement, BCI entered into the Asset Purchase  
17 Agreement with GRO. BCI has now sold its claims against BW to GRO. To protect GRO's  
18 interest pending this Court's approval of the sale, the Asset Purchase Agreement precludes BCI  
19 from supporting a plan without GRO's consent. It has, therefore, been necessary to negotiate  
20 several continuances of the BW disclosure statement hearing pending further discussions with  
21 GRO and the consummation of the sale to GRO.  
22

23           38.     Between the negotiation of the asset purchase agreement with GRO and the  
24 consummation of the sale, BCI and Applicant actively participated in negotiations among BW,  
25 CKE, GRO and BCI regarding an acceptable plan for BW in the event that the sale of BCI's  
26 claims against BW are sold to GRO. Although the parties made substantial progress in

1 attempting to agree on such a plan an agreement has not yet been reached with BW's creditors'  
2 committee. As the buyer of BCI's claims against BW, GRO has engaged counsel to represent it  
3 in BW's chapter 11 case. Applicant has provided GRO's new counsel with background  
4 information to complete an orderly transition of the representation of this massive claim to the  
5 successor, GRO.  
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7 **SERVICES PERFORMED – 065184.0008**

8 39. The professional services performed by Applicant on behalf of Debtors between  
9 February 1, 2000 and May 26, 2000, are set out below in a summary manner into the following  
10 discrete categories, which reflect the type of services performed on behalf of Debtors. These  
11 categories were established consistent with the guidelines of the United States Trustee. *See also*  
12 Exhibit I.  
13

14 A. **Case Administration – B110:** this category relates to the following  
services:

- 15 (1) review of all correspondence and pleadings filed in the case, their  
16 status and response deadlines.

17 Fees in this category total \$506, representing 1.3 hours of time spent. The following is a  
18 summary of the timekeepers for this category:

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<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
J.C. Krause, partner	1.00	\$450.00	\$450.00
J.C. Krause, partner	0.10	\$390.00	\$39.00
B. Carmichael, counsel	0.00	\$275.00	\$0.00
S. Augusta, legal assistant	0.20	\$85.00	\$17.00
<b>TOTALS:</b>	<b>1.30</b>		<b>\$506.00</b>

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1           B.    **Fee/Employment Applications – B160:** this category relates to the  
2 following services:

- 3                   (1) review of fee and employment applications submitted in this case.

4           Fees in this category total \$515, representing 1.6 hours of time spent. The following is a  
5 summary of the timekeepers for this category:  
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<u><b>Timekeeper</b></u>	<u><b>Hours</b></u>	<u><b>Rate</b></u>	<u><b>Value</b></u>
J.C. Krause, partner	0.60	\$450.00	\$270.00
J.C. Krause, partner	0.40	\$390.00	\$156.00
B. Carmichael, counsel	0.20	\$275.00	\$55.00
S. Augusta, legal assistant	0.40	\$85.00	\$34.00
<b>TOTALS:</b>	<b>1.60</b>		<b>\$515.00</b>

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13           C.    **Claim Administration and Objections – B310:** this category relates to the  
14 following services:

- 15                   (1) discussion regarding May 22, 2000 hearing.

16           Fees in this category total \$45, representing 0.1 hours of time spent. The following is a  
17 summary of the timekeepers for this category:  
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<u><b>Timekeeper</b></u>	<u><b>Hours</b></u>	<u><b>Rate</b></u>	<u><b>Value</b></u>
J.C. Krause, partner	0.1	\$450.00	\$45.00
<b>TOTALS:</b>	<b>0.1</b>		<b>\$45.00</b>

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23           D.    **Plan and Disclosure Statement – B320:** this category relates to the  
24 following services:

- 25                   (1) communications regarding negotiations and settlement of Boston  
26 West plan and implementation issues.

1 Fees in this category total \$2,298, representing 5.8 hours of time spent. The following is a  
2 summary of the timekeepers for this category:  
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<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Value</u>
J.C. Krause, partner	0.60	\$450.00	\$270.00
J.C. Krause, partner	5.20	\$390.00	\$2,028.00
<b>TOTALS:</b>	<b>5.80</b>		<b>\$2,298.00</b>

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9 **EXPENSES – 065184.0008**

10 40. It has been necessary for the Applicant law firm to incur and pay in advance out-  
11 of-pocket expenses in connection with its representation of the Debtor in this case. Careful  
12 records of those expenditures have been maintained and the expenses incurred are shown in  
13 Exhibit H to this Application.  
14

15 41. Photocopies made at Applicant's offices are charged at \$.25 per copy. However,  
16 whenever possible large copy projects are sent to Applicant's offsite contract reproduction center  
17 and are charged at between \$.12 and \$.15 per copy. Telecopy communication is utilized on those  
18 occasions when written communication must be immediate and oftentimes it is necessary to  
19 quickly transfer information. Due to cost and timing, it is not only faster but often more  
20 economical to telecopy a few pages rather than to send it by courier or overnight, or for Applicant  
21 to communicate it orally. Telecopies sent locally are charged at the flat rate of \$.50 per page for  
22 outgoing telecopies only. Charges for long distance telecopies were billed at \$ 1.50 per page.  
23 There is no charge for incoming telecopies.  
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1           42. Akin Gump has made every effort to minimize its expenses in this case. It is  
2 submitted that all of these expenses were reasonable, necessary, and the same as Applicant  
3 customarily charges its other clients. Applicant submits that it is entitled approval of the  
4 reimbursement paid in the sum of \$157.18 for matters relating to the Boston West case during  
5 this Final Period.  
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## 7                               **LEGAL STANDARDS**

8           43. In accordance with Section 330 of the Bankruptcy Code, the amount requested in  
9 this Application was calculated using the standard hourly rate for the attorneys and  
10 paraprofessionals involved multiplied by the number of hours worked. *See In re Yermakov*, 718  
11 F.2d 1465, 1471 (9<sup>th</sup> Cir. 1983) (“The primary method used to determine a reasonable attorneys’  
12 fee in a bankruptcy case is to multiply the number of hours expended by an hourly rate”). The  
13 result of this computation is referred to as the “lodestar” or basic fee, which, if warranted, can be  
14 adjusted upward or downward. In that regard, the Ninth Circuit Court of Appeals in *Yermakov*  
15 made specific references to *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5<sup>th</sup>  
16 Cir. 1974), in which the Fifth Circuit Court of Appeals listed twelve factors which should be  
17 considered in awarding attorneys’ fees. These “*Johnson* factors” have been referred to and  
18 utilized by many courts in considering and awarding attorneys’ fees in bankruptcy cases. *In re*  
19 *Nucorp Energy, Inc.*, 754 F.2d 655 (9<sup>th</sup> Cir. 1985).  
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22           44. The Ninth Circuit Bankruptcy Appellate Panel has held that the “lodestar”  
23 approach, coupled with consideration for the “*Johnson* factors” is the appropriate standard to be  
24 applied in awarding fees in a bankruptcy case. *In re Powerine Oil Co.*, 71 B.R. 767 (BAP 9<sup>th</sup> Cir.  
25 1986).  
26

1           45.     Applicant is cognizant of the fact that compensation will be paid to lawyers only  
2 for legal work and the dollar value of a particular task is not enhanced simply because a lawyer  
3 does it. Considerable care has been taken, therefore, to avoid the performance of purely  
4 ministerial tasks by lawyers through the use of paraprofessionals and law clerks where possible.  
5

6           46.     Applicant has made every effort to restrict the number of lawyers involved in this  
7 case to a minimum at any particular stage so as to (a) maximize familiarity with the subject  
8 matter and avoid waste or duplication of time; (b) employ special expertise in a given field of law  
9 when necessary to do the best job possible with the least amount of effort; and (c) assign the  
10 performance of all tasks to the least senior lawyer capable of performing it consistent with sound  
11 legal representation and supervision.

12           47.     Care has been taken to avoid duplication of effort and to employ lawyers whose  
13 expertise is of the requisite level to perform the services. However, it must be noted that in some  
14 instances questions involving the Debtors' estate have involved legal issues requiring a larger  
15 proportion of senior time. Furthermore, it is occasionally necessary for the participation of more  
16 than one attorney in order to adequately and completely represent the Debtors. Dual participation  
17 does not equate to duplication of effort but rather promotes efficiency and prevents future  
18 duplication of effort and interoffice conferences or preparation of memorandums, which would  
19 become necessary for factual communication. Meetings occasionally involved multiple separate  
20 subject matters and issues, which are being handled by different attorneys. Accordingly, the  
21 attorneys with responsibility for the respective matters are necessary for an informed and  
22 thorough discussion or presentation.  
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**FACTORS AFFECTING COMPENSATION**

48. It has been recognized that factors other than number of hours spent and the hourly rate normally charged may be considered in fixing the amount of reasonable attorneys fees to be awarded in a bankruptcy proceeding. There are twelve such factors set forth in *In re First Colonial Corp. of America*, 544 F.2d 1291 (5th Cir.), cert. den. 97 S.Ct. 1696 (1977) and *Johnson v. Georgia Highway Express, Inc.*, *supra*. One or more of these factors may serve as a basis for enhancing the hourly rate which might otherwise be allowed. *Wolf v. Frank*, 555 F.2d 1213 (5th Cir. 1977). The Applicant does not, however, at this time seek an enhancement of customary rates as set forth in Exhibits B, G, and J of this Application. The subjective factors which the Courts are required to consider on final applications.

**TIME AND LABOR REQUIRED**

49. Exhibits A and F to this Application set forth in detail all of the work performed for which compensation is sought during this Final Period. The date such services were rendered, the individual performing such services, a description of the services and the time expended are all detailed in Exhibits A and F. Applicant believes that the detail of Exhibits A and F support the position that reasonable compensation is being requested. All of the services specified in Exhibits A and F were necessary to enable the Debtor to perform its statutory duties and fulfill its fiduciary obligations.

**SKILL REQUISITE TO PERFORM THE LEGAL SERVICE PROPERLY**

50. Bankruptcy is a specialized area of federal practice, requiring knowledge of the Bankruptcy Code and other related federal statutes. In order to address the range of issues presented, Applicant utilized its skills and expertise in bankruptcy, real estate, tax, litigation, and corporate law. For purposes of making this analysis the Court should note that there have been



1 significant disputed issues in this case, some of which have been resolved without resort to the  
2 filing of adversarial pleadings. In these matters the adverse parties have been represented by  
3 multiple law firms of national reputation utilizing experienced and skilled attorneys. On behalf  
4 of the Debtors, Applicant was required to respond in kind.  
5

#### 6 **PRECLUSION OF OTHER EMPLOYMENT**

7 51. The time demand of general representation of the Debtors in this proceeding,  
8 while not resulting in a significant dislocation for all timekeepers involved, does require a  
9 significant amount of time allocations by certain of the attorneys participating in these cases and  
10 while other employment opportunities have not been precluded, the time spent on their  
11 representation does limit other opportunities. Exhibits A and F time records and the summaries  
12 that are found in paragraphs 30 and 39 illustrate this point.  
13

#### 14 **CUSTOMARY FEE**

15 52. The hourly rate at which compensation is requested is set forth by individual in  
16 Exhibits B, G and J attached hereto. These rates are no greater, and in some instances may be  
17 lower, than those being charged by attorneys with similar qualifications and experience. The  
18 rates are those customarily charged by Applicant to its usual and regular corporate legal clients  
19 and to the clients that Applicant represents in bankruptcy related matters.  
20

#### 21 **WHETHER THE FEE IS FIXED OR CONTINGENT**

22 53. Applicant's fee is neither fixed nor contingent. It is based upon the actual total  
23 number of hours worked, plus the actual costs incurred.  
24

#### 25 **TIME LIMITATIONS**

26 54. The time demand of general representation of the Debtors in this proceeding,  
while not resulting in a significant dislocation for all timekeepers involved, does require a

1 significant amount of time allocations by certain of the attorneys participating in these cases and  
2 while other employment opportunities have not been precluded, the time spent on their  
3 representation does limit other opportunities. Exhibits A and F time records and the summaries  
4 that are found in paragraphs 30 and 39 illustrate this point.

5  
6 **AMOUNT INVOLVED AND RESULTS OBTAINED**

7 55. Exhibits A and F to this Application set forth in detail all of the work performed  
8 for which interim compensation is sought. The date such services were rendered, the individual  
9 performing such services, a description of the services and the time expended are all detailed in  
10 Exhibits A and F. Applicant believes that the detail of Exhibits A and F support the position that  
11 reasonable compensation is being requested. All of the services specified in Exhibits A and F  
12 were necessary to enable the Debtor to perform its statutory duties and fulfill its fiduciary  
13 obligations.  
14

15 **EXPERIENCE, REPUTATION, AND ABILITY OF THE ATTORNEYS**

16 56. Members of the Applicant law firm have regularly appeared in significant  
17 bankruptcy cases throughout the United States over a period of many years and have acquired a  
18 substantial reputation in the legal community. Additionally, the corporate attorneys providing  
19 legal services in these cases have a similar national major client representative base of experience  
20 and expertise. Exhibit C attached to this Application describes the experience of Applicant's  
21 attorneys who have devoted time to the representation of the Debtor. As evidenced by the breadth  
22 of experience, the Applicant law firm is particularly qualified to serve as counsel for the Debtor  
23 in this case and the various levels of experience and expertise justify the rates and compensation  
24 sought in this Application. Performance to date in these cases before this Court should support  
25 these conclusions.  
26

1 **“UNDESIRABILITY” OF CASE**

2 57. There is a definite risk that fees and expenses will not get paid when a firm agrees  
3 to represent a debtor in possession. Due to this uncertainty, firms frequently elect not to  
4 represent a debtor in possession.  
5

6 **NATURE AND LENGTH OF THE PROFESSIONAL RELATIONSHIP WITH CLIENT**

7 58. Prior to the Petition Date, Akin Gump represented the Debtors as corporate  
8 counsel which included, but not limited to, providing legal advice relating to reorganization and  
9 bankruptcy. As a result of this prior representation, Akin Gump was familiar with the Debtors’  
10 operations and personnel. Such prior experience enabled efficient and economic representation  
11 of the Debtors and facilitated the completion of these reorganizations.  
12

13 **AWARDS IN SIMILAR CASES**

14 59. Akin Gump’s requested fees and expenses are similar to those fees and expenses  
15 paid in other Chapter 11 cases bankruptcy cases of this nature, length of time, and complexity.  
16

17 **CONCLUSION**

18 60. The services rendered by Akin Gump to the Debtor during the Final Period were  
19 substantial, highly professional, and beneficial to the Debtors’ Chapter 11 cases. They were  
20 reasonable and necessary to the preservation and maximization of the Debtors’ estate. The legal  
21 services culminated in the successful confirmation of a consensual plan of reorganization  
22 enabling the continuation of the operation of approximately 700 Boston Market restaurants.

23 61. The Applicant is requesting (i) approval of final compensation for 2,491.60 hours  
24 of time spent for services furnished as attorney to the Debtors during the Final Period in the  
25 amount of \$742,209.50 for the Final Period, (ii) approval of reimbursement of actual out-of-  
26 pocket expenses of \$93,203.66 for the Final Period, (iii) final approval of fees in the aggregate

1 amount of \$2,908,300.75 (inclusive of \$2,166,091.25 previously awarded and paid, and the  
2 amount requested for the Final Period), (iv) final approval of out of pocket expenses the total  
3 amount of \$338,862.47 (inclusive of \$245,658.81 previously awarded and paid, and the amounts  
4 requested for the Final Period), and (v) authorization for the Plan Trustee to pay Akin Gump the  
5 foregoing sums, less the amount previously paid pursuant to the Interim Fee Order for a total of  
6 \$492,313.37.  
7

8 Respectfully submitted this 10th day of July, 2000.

9 DEBTORS AND DEBTORS IN POSSESSION

10 By: \_\_\_\_\_ /s/ H.S. 3607

11 One of their Attorneys

12 AKIN, GUMP, STRAUSS, HAUER &  
13 FELD, L.L.P.

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15 S. Margie Venus

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21 - and -

22 LEWIS AND ROCA LLP

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 10, 2000, the foregoing document was served by federal express, priority overnight delivery on the following parties:

Office of the U.S. Trustee  
2929 North Central Avenue, Suite 700  
Pheonix, Arizona 85067-6170

Richard Casher  
Bingham Dana LLP  
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Hartford, CT 06103-3178

Randy Miller, General Counsel  
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Golden, CO 80401-4086

Gerald K. Smith, Plan Trustee  
Lewis & Roca, LLP  
40 North Central Avenue  
Phoenix, AZ 85004-4429

\_\_\_\_\_/s/ Laura B. DeWitt

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**DECLARATION OF H. REY STROUBE, III**

I, H. Rey Stroube, III, do hereby declare as follows:

1. I am a partner at the law firm of Akin, Gump, Strauss, Hauer & Feld, L.L.P; and
2. The fee application will be reviewed and approved by the client prior to the hearing.

DATED July 10, 2000

\_\_\_\_\_  
/s/ H. Rey Stroube, III  
H. Rey Stroube, III