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**ACCOUNTANTS AND FINANCIAL ADVISORS
 FOR BCE WEST, L.P., et al,
 DEBTORS IN POSSESSION**

**IN THE UNITED STATES BANKRUPTCY COURT
 DISTRICT OF ARIZONA**

IN RE:	§	Chapter 11
	§	
BCE WEST, L.P., et al	§	Case Nos. 98-12547
	§	through 98-12570 PHX CGC
Debtors	§	Jointly Administered
	§	
EID # 38-3196719	§	
	§	

**FIRST AND FINAL APPLICATION FOR COMPENSATION AND
 REIMBURSEMENT OF EXPENSES BY ARTHUR ANDERSEN LLP**

ARTHUR ANDERSEN LLP (“Applicant” or “Andersen”), accountants and financial advisors for the Debtors, BCE WEST, L.P., et al (the “Debtors”), in the above-referenced Chapter 11 cases files this its First and Final Application for Allowance of Compensation and Reimbursement of Expenses of Arthur Andersen LLP (“Application”), pursuant to the provisions of 11 U.S.C. §330 and in support thereof would respectfully show the Court as follows:

JURISDICTION

1. This Court has jurisdiction over the subject matter of this Application pursuant to the provisions of 28 U.S.C. Section 1334 and 157, 11 U.S.C. Sections 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure.

CASE INFORMATION AND STATUS

2. On October 5, 1998, Boston Chicken, Inc., BC Real Estate Investments, Inc., MidAtlantic Restaurants, Inc., BCI Mayfair, Inc., BC Great Lakes, LLC, Progressive Foods Concepts, Inc., BC Acquisition Sub, BC Golden Gate, LLC, BCBM Southwest, LP, BC Boston, LP, BC Superior, LLC, BC Heartland, LLC, BC Tri-States, LLC, Finest Foodservice, LLC, R&A Food Services, LP, P&L Food Services, LLC, BCE West, LP, Mayfair Partners, LP, BCI Massachusetts, Inc. BCI R&A, Inc. BCI Southwest, Inc., BCI West, Inc., BC New York, LLC, Buffalo P&L Food Services, Inc. (jointly administered as the “Debtors”) filed petitions under Chapter 11 of the United States Bankruptcy Code. As of the date of this Application, the Debtors have continued in possession of their property as debtors-in-possession.

EMPLOYMENT/RETAINER INFORMATION

3. The Debtor filed its Application to employ Arthur Andersen LLP as Accountants and Financial Advisors pursuant to 11 U.S.C. Section 327 on October 5, 1998. The Court entered its Order approving the Application on November 24, 1998.

4. Prior to the petition date, Andersen provided pre-petition bankruptcy consulting and accounting services to the Debtors. Andersen incurred \$150,888 in fees and \$17,779 in out-of-pocket expenses for these services. The Debtors paid for these services on October 4, 1998.

5. From October 5, 1998 through November 17, 1998 (the First and Final Fee “Application Period”), the Applicant has expended 906.0 hours of professional time. Total fees for the Final Fee Application period total \$145,552.50. During the same period, the Applicant incurred out-of-pocket expenses totaling \$23,662.56. The total amount requested by this Application is \$169,215.06.

- a. On December 21, 1998, Andersen submitted an invoice for interim compensation for the above referenced Application Period. This invoice erroneously included \$10,885.50 in fees that were actually incurred between October 1 and October 4,

1998 and were paid on October 4. Under the Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals, the Debtors paid Andersen 100% of the invoiced expenses and 80% of the invoiced fees.

Therefore, Andersen has received \$8,708.40 in excess interim compensation.

- b. After November 17, 1998, Andersen was replaced as Accountants and Financial Advisors to the Debtors. Therefore, Andersen will not be requesting additional compensation from the Debtors. Andersen is therefore requesting this Application as its First and Final Fee Application.
- c. The following summarizes the request for compensation:

Fees Requested	\$145,552.50
Expenses Requested	<u>23,662.56</u>
Total Requested	\$169,215.06
Less:	
Fees Paid	125,352.00
Expenses Paid	<u>23,662.56</u>
Amount Due and Requested	\$ 20,200.50

6. Andersen seeks compensation for services performed in connection with the representation of Debtors in its bankruptcy proceedings during the Application Period.

7. A list of professionals for whom compensation is sought along with a monthly total of hours worked and the standard hourly rates charged for their services are summarized in the attached Exhibit "A." Exhibit "B" provides summaries of services provided during the Application Period. Exhibit "B" was generated by Applicant and compiled from manually prepared daily time sheets submitted generally on a daily basis by the professionals employed by Andersen. Exhibit "B" contains detailed listings of all services performed for the Debtors by Andersen, the time spent and dates on which those services were performed, paraprofessionals who performed the services and rates charged during the Application Period. Exhibit "C" provides summaries of out-of-pocket expenses incurred by Andersen during the Application Period.

LODESTAR RULE

8. The United States Supreme Court recently stated its preference for the “lodestar” approach in determining allowable attorney fees. Pennsylvania v. Delaware Valley Citizens Council for Clean Air, 106 S.Ct. 3088 (1986). The Delaware Valley case approved a two-step method of computing legal fees which has come to be known as the “lodestar” method. The “lodestar” is determined by multiplying the number of attorney hours reasonably expended by a reasonable hourly fee rate. The “lodestar” derived through this calculation is presumed to be the reasonable fee to which counsel is entitled. Blum v. Stenson, 465 U.S. 886 (1984).

After the determination of the “lodestar,” the Court may make adjustments to the “lodestar,” but adjustments are proper in “rare” and “exceptional” cases. Id., at 898-901. Because of the emphasis on the amount of attorney time expended, the “lodestar” approach provides a more analytical framework than the factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974). In fact, many of the Johnson factors, including the “novelty and complexity of the issues,” “the special skill and experience of counsel,” the “quality of representation” and the “results obtained” are normally reflected in the “lodestar” approach.

In Hensley v. Eckerhart, 461 U.S. 424 (1983), the Court set forth the following guidelines for the determination of a reasonable fee:

Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are more excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. “In the private sector, ‘billing judgment’ is an important component in fee setting. It is no less important here. Hours that are not properly billed to one’s client are not properly billed to one’s adversary pursuant to statutory authority.” Copeland v. Marshall, 205 U.S. App. D.C. 390, 401, 641 F.2d 880, 891 (1980) (en banc) (emphasis in original).

103 S. Ct. at 1933, 76 L. Ed.2d 40. The Hensley Court indicated that the Court may also evaluate each case’s facts in relation to the Johnson factors, although many of these factors are subsumed in the “lodestar” calculation.

9. Applicant has expended 906.0 hours during the Application Period in time and labor representing the Debtors. Applicant maintains the “lodestar” value for the Application Period is \$145,552.50.

FIRST COLONIAL FACTORS

10. The fees and expenses sought are justified under the criteria set forth in Johnson and in In re First Colonial Corp., 544 F.2d 1291 (5th Cir. 1977). Brief statements with regard to each of the 12 elements set out in the Johnson case are as follows:

a. The time and labor required: Applicant has expended approximately 906.0 hours in the representation of the Debtors during the Application Period, resulting in total fees incurred from October 5, 1998 through November 17,1998, in the amount of \$145,552.50. The time and hourly billing rate of each professional performing services on behalf of the Debtors are reflected in the summary printouts attached hereto as Exhibit "A" and in detail in the attached Exhibit "B".

b. The novelty and difficulty of questions: Applicant represents to the Court that the questions encountered in representing the Debtors are of a complex and specialized nature, requiring a high degree of skill and patience in obtaining their successful resolution.

c. Skill requisite to perform services properly: Applicant's firm has members who have performed services on behalf of the Debtors who specialize in the practice of accounting, tax, bankruptcy accounting, valuation, business systems, and financial advisory services. Due to their expertise and skill in these highly specialized areas, Applicant believes far more time would easily have been employed by less experienced professionals with considerably less rewarding results to date. The array of financial and operating problems and considerations were presented in this proceeding and the prompt and skillful action taken upon those problems by Applicant required a moderate degree of expertise and experience. Applicant's personnel were accordingly utilized as evidenced by Exhibits "A" through "B."

d. Exclusion of other employment: Applicant is unable to estimate the extent of other employment it has been precluded from accepting by reason of the employment as accountants for the Debtors herein. However, Applicant was unable to perform services for its other clients and unable to develop additional business for the firm while expending the time required of Applicant on behalf of the Debtors during the period for which this Application covers.

e. Customary fees: The fees applied for herein are equivalent to customary fees in other proceedings for similar services rendered and results to date.

f. Whether the fee is fixed or contingent: Applicant's fee for representing the Debtors in this proceeding was fixed at its standard hourly rates and was not contingent upon the

results achieved or the ultimate availability of funds for the payment of said fees from the estate.

g. Time limitations: As is apparent from the summary of hours expended as described in Exhibit “A” and the detailed description of the work performed during each of those hours as described in Exhibit “B” attached hereto, the representation of the Debtors herein required prompt action in many of the activities of the case.

h. Amount involved and results obtained: The post-petition role of the Applicant was the assistance with the preparation and timely filing of the Debtors’ schedules and statements of financial affairs. The amount of time and effort was necessary given the size of the estates, the complexity of the issues, and significant attrition of the Debtors’ personnel. Andersen’s familiarity with the Debtors and these issues resulted in the timely filing of schedules and statements of affairs.

i. The experience, reputation, and abilities of the professionals: Donald E. Thomas, Reagan Stewart, Rey Stroube, Ray Strong, Tasha Pomerleau, Jeff Kersey, Carter Groves and Randy McMullin are trained professionals who concentrate full-time in corporate restructuring and bankruptcy consulting. Laurie Skains, James Fletcher, Jay Wilcox, and Jonathan Shank are trained professionals who concentrate in accounting and information systems and data base management.

j. Undesirability of the case: Applicant does not feel the subject case or the representation of the Debtors in this proceeding was “undesirable.”

k. The nature and length of the professional relationship with the client: Applicant’s relationship with client is solely the providing of bankruptcy advice and services; such relationship exists on an ongoing basis and is expected to continue as such.

l. Awards in similar cases: According to fee applications in some other cases, Applicant believes that the fee requested is certainly reasonable and is less than or at least in line with fees for cases of similar difficulty and problems.

11. Applicant is of the opinion and represents to the Court that the services rendered herein as professionals for the Debtors have substantially benefited this estate. In particular, Applicant notes that services were performed at an average hourly rate of \$160.65 and as of this date are of a reasonable value in the amount of \$145,552.50. Applicant further represents that the fees applied for are in conformity with fees allowed in similar proceedings for similar services rendered and results obtained. Applicant respectfully requests that the Court take

judicial notice of the awards which have been made in similar proceedings in this Court and the other Bankruptcy Courts in the State of Texas.

APPLICANT ASSERTIONS

12. Applicant does not hold or represent and has not held or represented at any time during its representation of the Debtors any interest adverse to the estate, and is and has been at all times a disinterested party.

13. Applicant has made no agreement for the sharing of compensation herein with other entities except as such fees are shared by members in Applicant's firm.

WHEREFORE, Applicant respectfully prays that this Court award Applicant the reasonable compensation for professional services requested herein as accountants and financial advisors for the Debtor in the amount of \$145,552.50 and grant reimbursement of out-of-pocket expenses incurred in the sum of \$23,662.56, for an aggregate request of \$169,215.06 incurred during this First and Final Fee Application Period.

Respectfully submitted,

ARTHUR ANDERSEN LLP

By: /s/Reagan Stewart
Reagan Stewart

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**ACCOUNTANTS AND FINANCIAL
ADVISORS FOR BCE WEST, L.P, et al
DEBTORS IN POSSESSION**

PROFESSIONAL CERTIFICATION

I, Reagan Stewart, have prepared the foregoing Application in its entirety and assert that such Application conforms to the Guidelines for Compensation and Expense Reimbursement of Professionals, except where noted, and such compensation and reimbursements requested are billed at rates in accordance with practices in the normal course of business to the best of my knowledge, information, and belief.

/s/ Reagan Stewart
Reagan Stewart