

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

**NAME OF APPLICANT: BINGHAM DANA LLP
ROLE IN CASE: Attorneys for Official Unsecured
Creditors**

In re:	:	Chapter 11	CURRENT APPLICATION	
	:		Fees Requested:	\$562,710.50
BCE WEST, L.P., et al.,	:	Case Nos.	Expenses Requested:	56,294.82
	:	98-12547 through	Adjusted Retained Fees:	52,914.50
	:	98-12570-ECF-CGC	TOTAL:	\$671,919.82
	:	Jointly Administered		
Debtors.	:		Fees and Expenses Previously Requested:	\$1,200,464.12
			Fees and Expenses Previously Awarded:	\$1,200,464.12
			Prepetition Retainer Paid:	\$ 60,710.30

**APPLICATION FOR FINAL ALLOWANCE OF COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF BINGHAM DANA LLP AS ATTORNEYS
FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Timekeeper Name	Year Admitted	Rate	Hours Billed	Total Billed
<u>Partners</u>				
Brunstad, G. Eric	1986	\$ 325.00	0.6	\$ 195.00
Casher, Richard F.	1976	\$ 425.00	389.3	\$ 165,452.50
Kelly, William E.	1973	\$ 425.00	0.3	\$ 127.50
Lambert, Paul J.	1970	\$ 400.00	356.6	\$ 142,640.00
Nye, Gregory W.	1981	\$ 325.00	315.5	\$ 102,537.50
<u>Counsel/Associates</u>				
Anker, Nicole	1998	\$ 165.00	30.5	\$ 5,032.50
Dailey, Renee M.	1999	\$ 165.00	4.6	\$ 759.00
Dailey, Renee M.	1999	\$ 155.00	7.8	\$ 1,209.00
Deveno, Mark W.	1999	\$ 155.00	0.7	\$ 108.50
Deveno, Mark W.	1999	\$ 165.00	91.6	\$ 15,114.00
Dowd, Miriam	1999	\$ 155.00	12.0	\$ 1,860.00

Timekeeper Name	Year Admitted	Rate	Hours Billed	Total Billed
Finn, Gerard P.	1995	\$ 225.00	171.1	\$ 38,497.50
Friedman, Judith H.	1985	\$ 225.00	32.8	\$ 7,380.00
Govier, William F.	1999	\$ 155.00	5.4	\$ 837.00
Gustafson, Anna M.	1997	\$ 225.00	184.4	\$ 41,490.00
Gustafson, Anna M.	1997	\$ 190.00	27.8	\$ 5,282.00
LaFreniere, Nora E.	1997	\$ 175.00	38.1	\$ 6,667.50
Pereira, Helder P.	1999	\$ 165.00	2.5	\$ 412.50
Shah, Rupal S.	1999	\$ 165.00	21.7	\$ 3,580.50
Smits, Anthony J.	1994	\$ 350.00	5.7	\$ 1,995.00
Smits, Anthony J.	1994	\$ 275.00	1.3	\$ 357.50
Snow, Christopher S.	1998	\$ 165.00	1.2	\$ 198.00
Snow, Christopher S.	1998	\$ 180.00	<u>1.2</u>	<u>\$ 216.00</u>

Blended Rate	\$318.29	1,702.70	\$ 541,949.00
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Paralegals/Law Clerks

Curran, Theresa L.	n/a	\$ 110.00	3.1	\$ 341.00
England, Sam	n/a	\$ 120.00	6.0	\$ 720.00
Flynn, Donald	n/a	\$ 120.00	1.0	\$ 120.00
Gallup, Jane H.	n/a	\$ 130.00	20.0	\$ 2,600.00
Gary, Stephanie Y.	n/a	\$ 95.00	9.0	\$ 855.00
Gary, Stephanie Y.	n/a	\$ 110.00	19.3	\$ 2,123.00
Hall, Kevin B.	n/a	\$ 125.00	0.4	\$ 50.00
Lemire, Roger A.	n/a	\$ 135.00	1.2	\$ 162.00
Miller, Linda J.	n/a	\$ 130.00	66.1	\$ 8,593.00
Miller, Linda J.	n/a	\$ 115.00	12.3	\$ 1,414.50
Palmieri, Gina M.	n/a	\$ 110.00	3.2	\$ 352.00
Percy, Rachel	n/a	\$ 120.00	28.0	\$ 3,360.00
Stolle, Ria M.	n/a	\$ 105.00	0.2	\$ 21.00
Tarshis, Emily Ann	n/a	\$ 125.00	<u>0.4</u>	<u>\$ 50.00</u>

		170.20	\$ 20,761.50
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Grand Totals		1,872.90	\$ 562,710.50
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In Re:

BCE WEST, L.P., *et al.*,

Debtors.

Proceedings Under Chapter 11

Case No. B98-12547-ECF-CGC

(Case Nos. 98-12547-ECF-CGC
through
98-12570-ECF-CGC)

(Jointly Administered)

EID: 38-319719

**APPLICATION FOR FINAL
ALLOWANCE OF
COMPENSATION AND
REIMBURSEMENT OF
EXPENSES OF BINGHAM DANA
LLP, AS ATTORNEYS FOR THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS**

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2 Bingham Dana LLP ("**Bingham**"), on its own behalf and as successor
3 by merger to Hebb & Gitlin, a Professional Corporation ("**H&G**"),^{1/} hereby
4 submits this application (the "**Application**") for final allowance of
5 compensation for professional services rendered and reimbursement of
6 expenses incurred as attorneys for the official committee of unsecured
7 creditors (the "**Committee**") in the within Chapter 11 cases (the "**Chapter 11**
8 **Cases**") of Boston Chicken, Inc. ("**BCI**") and its affiliated debtors (BCI and
9 such affiliated debtors, collectively, the "**Debtors**" or the "**Company**"). In
10 support of its Application, Bingham respectfully represents as follows:

11 **INTRODUCTION**

12 1. By this Application, Bingham requests an order of this Court
13 pursuant to Sections 330 and 331 of the United States Bankruptcy Code, 11
14 U.S.C. § 101, *et seq.* (as amended, the "**Bankruptcy Code**") and Rule 2016 of
15 the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**")
16 awarding (i) an allowance of compensation in the amount of \$562,710.50 (the
17 "**Current Period Fees**") for professional services rendered by Bingham on
18 behalf of the Committee from February 1, 2000 through and including May 26,
19 2000 (the "**Current Period**"), (ii) reimbursement of actual and necessary
20 expenses incurred by Bingham during the Current Period in connection with
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22 ^{1/}On July 15, 1999, H&G formally merged with Bingham Dana LLP.
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2 the rendering of such professional services in the amount of \$56,294.82 (the
3 “**Current Period Expenses**”)^{2/} and (iii) an allowance of compensation in the
4 amount of \$52,914.50 (the “**Adjusted Retained Fees**”)^{3/}, representing the
5 \$73,877.50 in aggregate Bingham fees previously approved by the Court (the
6 “**Retained Fees**”) pursuant to the Interim Allowance Orders (as defined
7 herein) but not paid by the Debtors in accordance with the retainage
8 provisions prescribed by the Procedural Order (as defined herein)^{4/} less the
9 Non-Working Travel Credit.

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11 _____
12 ^{2/}This Application reflects a limited number of time and expense entries
13 for services performed during prior fee application periods. Those entries are
14 for fees and expenses that, although performed during prior periods, were not
15 captured by Bingham’s accounting system until after the close of the prior
16 application period. Accordingly, Bingham seeks allowance of those fees and
17 expenses in this Application.

18 ^{3/}Pursuant to an agreement between the professionals representing both
19 the Debtors and the Committee, Bingham agreed to accept a reduction of one-
20 half of all non-working travel time billed, provided that all other professionals
21 subject to Bankruptcy Code § 330 did the same. The Current Period Fees have
22 already been adjusted to reflect this one-half reduction; the Retained Fees (as
23 defined herein) have been reduced by \$20,963.00 to reflect a one-half reduction
24 in fees for non-working travel in all prior application periods (the “**Non-
Working Travel Credit**”). Accordingly, the adjusted amount of the Retained
Fees after taking into account such credit is \$52,914.50, as reflected in the
accompanying text.

^{4/}Bingham holds a retainer in the amount of \$60,710.30 (the
“**Prepetition Retainer**”) paid to it by Boston Chicken, Inc., prior to the
Petition Date in connection with Bingham’s service as counsel to the Ad Hoc
Committee (as defined herein). Bingham requests that all sums applied for in

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2 2. Attorneys at Bingham expended 1,720.70 hours on the within
3 Chapter 11 Cases during the Current Period, while legal assistants expended
4 170.20 hours, producing an aggregate lodestar rate (excluding legal assistants)
5 of \$318.29 per hour.^{5/}

6 3. In addition, by this Application, Bingham requests an order of
7 this Court pursuant to Section 330 of the Bankruptcy Code and Federal Rule
8 of Bankruptcy Procedure 2016 awarding (i) a final allowance of compensation
9 for services rendered by Bingham in the amount of \$1,730,026.50, representing
10 (x) all previously awarded fees allowed pursuant to the Interim Allowance
11 Orders (including all Bingham fees previously approved by the Court pursuant
12 to the Interim Allowance Orders (as defined herein) but not paid by the
13 Debtors in accordance with the retainage provisions prescribed by the
14 Procedural Order (as defined herein), and after adjusting for the Non-Working
15 Travel Credit^{6/}) and (y) the Current Period Fees and (ii) a final allowance of

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17 this Application be paid to it net of the Prepetition Retainer and that Bingham
be permitted to retain the Prepetition Retainer.

18 ^{5/}Certain of Bingham's hourly billing rates increased on March 1, 2000.

19 ^{6/}Pursuant to an agreement between the professionals representing both
20 the Debtors and the Committee, Bingham agreed to accept a reduction of one-
21 half of all non-working travel time billed, provided that all other professionals
22 subject to Bankruptcy Code § 330 did the same. The Current Period Fees have
already been adjusted to reflect this one-half reduction; the Retained Fees (as
23 defined herein) have been reduced by \$20,963.00 to reflect a one-half reduction
24 in fees for non-working travel in all prior application periods. Accordingly, the

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2 reimbursement of expenses incurred by Bingham in the ordinary course of
3 rendering such services in the amount of \$142,357.44, representing (x) all
4 previously awarded expenses allowed pursuant to the Interim Allowance
5 Orders and (y) the Current Period Expenses, in each case with respect to the
6 period October 4, 1998 through and including May 26, 2000 (the "**Final**
7 **Allowance Period**"), for an aggregate final allowance of compensation and
8 reimbursement of expenses in the amount of \$1,872,383.94.

9 PROCEDURES

10 4. Bingham has complied with the United States Trustee Guidelines
11 for Reviewing Applications for Compensation and Reimbursement of Expenses
12 Filed Under 11 U.S.C. § 330, dated January 30, 1996 (the "**U.S. Trustee's**
13 **Guidelines**"), as well as this Court's "Order Establishing Procedures for
14 Interim Compensation and Reimbursement of Professionals" dated October 27,
15 1998 (the "**Procedural Order**"), which prescribed the procedures governing
16 the application for and allowance of interim fees and expenses incurred by
17 professionals in the Chapter 11 Cases.

18 BACKGROUND

19 5. This Court has jurisdiction over this Application pursuant to 28
20 U.S.C. §§ 157 and 1334. Venue of the Chapter 11 Cases and proceedings

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22 adjusted amount of the Retained Fees after taking into account the Non-
23 Working Travel Credit is \$52,914.50, as reflected in the accompanying text.
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relating to the Application is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. On October 5, 1998 (the “**Petition Date**”), the Debtors filed their respective voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code, and, until May 26, 2000, the Effective Date of the Debtors’ Plan, were managing their respective businesses and property as debtors and debtors in possession.

7. On October 21, 1998, the United States Trustee’s Office appointed the Committee pursuant to Section 1102(a)(1) of the Bankruptcy Code. On the same day, the Committee selected H&G as counsel to the Committee.

RETENTION OF BINGHAM DANA LLP

8. Pursuant to an order of this Court dated October 26, 1998, H&G was retained as counsel to the Committee, *nunc pro tunc* to October 4, 1998 (the “Retention Order”). On July 15, 1999, H&G formally merged with Bingham Dana LLP.

9. Bingham’s fees and expenses relating to the Current Period and all of the fees and expenses for which Bingham requests a final allowance were rendered in connection with the Chapter 11 Cases and in the discharge and execution of Bingham’s professional responsibilities as counsel to the Committee. Bingham respectfully submits that such services in all respects

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2 have been reasonable, necessary and beneficial to the Committee and general,
3 unsecured creditors of the Debtors' estates.

4 10. Bingham maintains written records of the time expended by
5 attorneys, law clerks and legal assistants. Those time records are maintained
6 contemporaneously with the rendering of services by each of Bingham's
7 attorneys, law clerks and legal assistants in the ordinary course of business.

8 11. Such records, copies of which are annexed hereto as Exhibit A, set
9 forth in detail the services rendered on behalf of the Committee, the dates
10 upon which such services were rendered, the nature of the services, the time
11 spent and the identity of the attorney, law clerk or legal assistant who
12 performed such services. A schedule setting forth (a) the number of hours
13 expended by the individual attorneys, law clerks and legal assistants, (b) the
14 year each attorney was licensed to practice, (c) the position of each attorney,
15 law clerk or legal assistant within Bingham, (d) the practice group in which
16 each respective attorney or legal assistant practices, (e) the standard hourly
17 rate which Bingham charges for the same or similar services of each attorney,
18 law clerk or legal assistant in matters not related to the within Chapter 11
19 Cases and (f) the total fees attributable to services rendered by each attorney,
20 law clerk or legal assistant is annexed hereto as Exhibit B.

21 12. Bingham also maintains records of all actual and necessary out-
22 of-pocket expenses incurred in connection with the rendering of professional
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2 services. A schedule of the categories of expenses and amounts for which
3 reimbursement is sought, made from records maintained in the ordinary
4 course of business, is annexed hereto as Exhibit C, together with the computer
5 backup for such expenses.

6 CASE STATUS

7 13. No trustee or examiner has been appointed during the Final
8 Allowance Period pursuant to § 1104 of the Bankruptcy Code.

9 14. On January 6, 2000, the Debtors filed their initial disclosure
10 statement and plan of reorganization (the "**Original Plan**"). On February 17,
11 2000, the Debtors' filed the "Debtors' Disclosure Statement for Second
12 Amended Plan Filed February 17, 2000" (the "**Second Amended Disclosure**
13 **Statement**"), together with the "Debtors' Second Amended Plan Filed
14 February 17, 2000" (the "**Second Amended Plan**"). On February 18, 2000,
15 the Court signed an order approving the Second Amended Disclosure
16 Statement and authorizing the Debtors to solicit acceptances of the Second
17 Amended Plan. On May 3, 2000, the Debtor filed their "Debtors' Third
18 Amended Disclosure Statement for Third Amended Plan Filed May 3, 2000,"
19 together with the "Debtors' Third Amended Plan Filed May 3, 2000" (the
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2 **“Third Amended Plan”**).^{7/} A confirmation hearing in respect of the Third
3 Amended Plan was held before the Court on May 11, 2000; on May 15, 2000,
4 the Court signed an order confirming the Third Amended Plan. The Effective
5 Date of the Plan occurred on May 26, 2000, the last day of the Current Period.

6 SUMMARY OF SERVICES RENDERED

7 Overview

8 15. Shortly prior to the Petition Date, the Debtors and an ad hoc
9 Committee of subordinated bondholders of Boston Chicken, Inc. (the **“Ad Hoc**
10 **Committee”**) represented by H&G held a series of discussion concerning the
11 treatment of the bondholders under a potential plan of reorganization that the
12 Debtors anticipated filing following the inevitable commencement of their
13 Chapter 11 Cases. As an outgrowth of those discussions, the Ad Hoc
14 Committee delivered a letter to the Debtors confirming the Ad Hoc Committee
15 members’ qualified support of a plan of reorganization that would result in a
16 conversion of unsecured debt (including the Debenture Claims and the lease
17 rejection claims of landlords) into 100% of the common equity of the
18 reorganized company (subject to dilution for management options and, if the
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21 ^{7/}Unless otherwise defined herein, capitalized terms used herein and not
22 otherwise defined herein shall have the respective meanings ascribed to such
23 terms in the Third Amended Plan.
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2 Debtors were to meet their business plan projections, out-of-the-money
3 warrants for equity classes).

4 16. At that time, the Debtors, the Ad Hoc Committee, the 1996
5 Lenders and their respective financial advisors believed that the Company had
6 substantial enterprise value in excess of the approximately \$280 million of
7 senior secured debt held by the 1995 Lenders and the 1996 Lenders,
8 respectively. Indeed, between June 1998 and October 1998, those
9 professionals issued reports stating that the Company's enterprise value was
10 between \$300 and \$600 million. Even shortly after the Debtors commenced
11 their Chapter 11 Cases, the 1996 Lenders' financial advisors, Ernst & Young,
12 advised that "on a worst-case basis (distressed sale) the senior debt will be
13 covered with 'something' left over for the other [creditors]."^{8/} However, during
14 the months following the Petition Date, although the Debtors' management
15 team made significant strides in reducing overhead expenses and closing
16 under-performing stores, the Debtors' "top line" (*i.e.*, revenue) performance
17 deteriorated due, in part, to the negative publicity associated with the
18 commencement of the Chapter 11 Cases.

19 17. Ultimately, although the Debtors' top line performance
20 experienced marked improvement commencing in July 1999 and continuing

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22 ^{8/}See Transcript of deposition of Daniel Gioia, March 2, 2000, at 17.
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2 through year-end 1999, the Debtors' enterprise value suffered enormous
3 deterioration in bankruptcy. That deterioration was borne out by the
4 marketing and sale process that the Debtors, at the insistence of the 1996
5 Lenders, commenced in March 1999. That process produced a non-binding
6 letter of intent from Boston Market Acquisition Corporation ("**BMAC**")
7 proposing to purchase substantially all of the Debtors' assets for a mere \$140
8 million, only \$105 of which was to be paid in cash. Following the withdrawal
9 of BMAC's bid in late August 1999, the Debtors resumed their marketing
10 process and, eventually, entered into the Asset Purchase Agreement (the
11 "**Asset Purchase Agreement**") with McDonald's and Golden Restaurant
12 Operations, Inc. ("**GRO**"). The Asset Purchase Agreement provided for a
13 modestly improved purchase price of \$173.5 million (the "**McDonald's**
14 **Purchase Price**").

15 18. In line with the disappointing (from the Committee's perspective)
16 results of the sale process, the respective financial advisors for the Debtors and
17 the 1996 Lenders reached nearly identical conclusions regarding the
18 Company's enterprise value, namely \$171 million and \$170 million,
19 respectively.^{9/} Throughout 1999 and continuing into 2000, the Debtors and the
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21 ^{9/}In contrast, the Committee's financial advisors, Houlihan Lokey
22 Howard & Zukin, concluded that the Company's enterprise value, as of March
23 15, 2000, was between \$260.9 million and \$336.9 million.
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1996 Lenders regarded the Committee’s constituency as “out of the money.” As a consequence, the Debtors and the 1996 Lenders, the joint architects of the Debtors’ plans of reorganization, declined to include the Committee in any plan negotiations prior to the negotiations relating to the Third Amended Plan. Consistent with the foregoing, the Original Plan and the First Amended Plan provided for no recovery for holders of Debenture Claims and little prospect of any recovery for other non-subordinated, general, unsecured creditors.

19. Against that daunting backdrop, the Committee, through its counsel, set about the enormously uphill task of fighting for a recovery for general, unsecured creditors. Bingham’s principal contribution to the Estates’ general, unsecured creditors was to devise credible, substantive objections to the Debtors’ Original Plan, develop and implement a litigation strategy in furtherance of such objections and, ultimately, negotiate a settlement with the 1996 Lenders and McDonald’s, reflected in the Third Amended Plan. That settlement provides general, unsecured creditors with \$3.15 million in value (the “**Committee Recovery**”) from three sources. First, general, unsecured creditors (excluding the respective holders of deficiency claims of the 1995 Lenders and the 1996 Lenders) will share pro rata in a \$2 million cash distribution on the Effective Date. Second, those same general, unsecured creditors will receive the first \$1 million of Estate Funds realized by the Plan

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Trustee through the liquidation of unencumbered assets retained by the Plan Trust. Finally, the respective administrative expense claims of the two indenture trustees serving under the trust indentures governing the Debentures will be allowed to the extent of \$150,000; this feature of the settlement benefits the holders of the Debenture Claims by reducing the amount by which the indenture trustees may charge the \$3 million recovery on account of the indenture trustees' fees and expense incurred in administering their respective trusts.

20. The \$3.15 million Committee Recovery, although small in relation to the amount of the claims pool that will share in it, must be viewed in the context of the severe "haircuts" taken by the 1995 Lenders and the 1996 Lenders under the Third Amended Plan. The 1995 Lenders are receiving a cash payment of only \$6 million in respect of their \$55 million claim; the 1996 Lenders appear to be realizing a cash recovery of between 30%-40% of their claims.^{10/} The \$2.15 million cash component of the Committee Recovery represents approximately 1.4% of the cash consideration paid by McDonald's under the Asset Purchase Agreement, which compares very favorably to the cash recovery of the 1995 Lenders (to whose claim the Debenture Claims are

^{10/}Bingham is not aware of any summary or estimate that shows the actual cash realized or expected to be realized by the 1996 Lenders as a result

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2 subordinated), which represents approximately 3.8% of the cash consideration
3 paid by McDonald's.

4 21. Achieving the Committee Recovery entailed a substantial legal
5 effort, which did not come to fruition until April 27, 2000, on which date the
6 Debtors, the Committee, McDonald's, the 1995 Lenders and the 1996 Lenders
7 executed a document entitled "Principal Terms of Global Settlement," which
8 set forth, among other things, the terms and conditions governing the
9 Committee Recovery. The litigation effort entailed extensive discovery that
10 included depositions taken by the Committee of the Debtors' CEO and CFO,
11 General Electric Capital Corporation, Lazard Freres, Ernst & Young and Bell
12 Atlantic Credit Corporation (a member of the 1996 Lenders) and depositions
13 taken by the 1996 Lenders of the former chairman of the Committee and
14 Houlihan Lokey Howard & Zukin.^{11/} Document discovery resulted in the
15 production of tens of thousands of pages and a number of skirmishes between
16 the Committee and McDonald's over the production of documents, each
17 requiring intervention of the Court.

18 22. Placed in the proper context of a case in which the senior secured
19 creditors have taken huge losses on their loans to the Debtors, and where
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21 of the consummation of the McDonald's transaction. Therefore, the 30%-40%
22 range set forth in the text is an educated guess.
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2 enterprise valuation issues posed virtually insurmountable challenges, the
3 Committee Recovery is a significant achievement.

4 Summary of Services Rendered During the Current Period

5 23. Bingham has divided its services during the Current Period into
6 several categories in accordance with the U.S. Trustee's Guidelines, each of
7 which is described in more detail below.

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9 **Case Administration**

10 24. The majority of the time expended by Bingham in this category
11 was in responding to requests for information and status inquiries by public
12 bondholders and unsecured creditors of the Debtors following the Petition
13 Date. These inquiries have steadily decreased since the Petition Date, but
14 have continued throughout the Current Period.

15 **Individuals Providing Services On Project, Time Spent and Fees**
16 **Requested^{12/}**

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425	17.80	\$7,565.00
Gary, Stephanie Y.	\$95	9.00	\$855.00

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20 ^{11/}The global settlement obviated the need for the Committee to take
21 depositions of three officers of McDonald's.

22 ^{12/}Please see Exhibit A for the chronological compilation of time entries
23 attributable to this project category.
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Gary, Stephanie Y.	\$110	19.30	\$2,123.00
Gustafson, Anna M.	\$190	1.40	\$266.00
Gustafson, Anna M.	\$225	1.50	\$337.50
Miller, Linda J.	\$115	0.50	\$57.50
Miller, Linda J.	\$130	0.60	\$78.00
Palmieri, Gina M.	\$110	<u>3.20</u>	<u>\$352.00</u>
TOTAL:		53.30	\$11,634.00

Fee/Employment Applications

25. The services performed by Bingham in this category relate to the preparation of Bingham’s fourth fee application, the preparation of monthly fee statements required to be compiled and submitted pursuant to the Procedural Order, and the preparation of Bingham’s final fee application.

Individuals Providing Services On Project, Time Spent and Fees Requested¹³

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$ 425.00	15.30	\$6,502.50
Dailey, Renee M.	\$ 155.00	0.20	\$31.00
Govier, William F.	\$ 155.00	5.40	\$837.00
Miller, Linda J.	\$ 115.00	11.80	\$1,357.00
Miller, Linda J.	\$ 130.00	63.20	\$8,216.00
Smits, Anthony J.	\$ 275.00	0.50	\$137.50
Smits, Anthony J.	\$ 350.00	<u>2.70</u>	<u>\$945.00</u>
TOTAL:		99.10	\$18,026.00

¹³Please see Exhibit A for the chronological compilation of time entries attributable to this project category.

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Meeting of Creditors

26. The services performed by Bingham in this category relate primarily to the preparation for and the orderly conduct and management of meetings of the Committee. Bingham's services may be summarized as follows:

a. Bingham coordinated and participated in numerous telephone conferences with Houlihan Lokey to address and analyze strategic, legal, financial and business issues affecting the Debtors that were relevant to the Committee's interests in the Chapter 11 Cases.

b. Bingham coordinated, arranged and conducted regular Committee meetings to consider pertinent strategic, legal, financial and business issues and pleadings filed in the Chapter 11 Cases.

27. In addition to the services described above, Bingham performed numerous other services which facilitated the smooth functioning of the Committee as a whole. By way of example, such services included preparation of Committee agendas and meeting minutes and preparation of memoranda to the Committee to inform the Committee of current developments.

Individuals Providing Services On Project, Time Spent and Fees Requested^{14/}

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	36.90	\$15,682.50
Gustafson, Anna M.	\$225.00	6.10	\$1,372.50
Lambert, Paul J.	\$400.00	1.50	\$600.00
Nye, Gregory W.	\$325.00	2.10	\$682.50
Smits, Anthony J.	\$350.00	<u>0.50</u>	<u>\$175.00</u>
TOTAL:		47.10	\$18,512.50

Financing

28. The services performed by Bingham in this category relate to the review and analysis of the proposed seventh amendment to the Debtors' postpetition credit facility and the related court order.

Individuals Providing Services On Project, Time Spent and Fees Requested^{15/}

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	0.90	\$382.50
Kelly, William E.	\$425.00	<u>0.30</u>	<u>\$127.50</u>
TOTAL:		1.20	\$510.00

^{14/} Please see Exhibit A for the chronological compilation of time entries attributable to this project category.

^{15/} Please see Exhibit A for the chronological compilation of time entries attributable to this project category.

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2 **Relief from Stay Proceedings**

3 29. The services performed by Bingham in this category relate to the
4 review of miscellaneous relief from stay motions filed by various of the
5 Debtors' creditors from time to time.

6 **Individuals Providing Services On Project, Time Spent and Fees**
7 **Requested^{16/}**

8

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	<u>0.20</u>	<u>\$85.00</u>
TOTAL:		0.20	\$85.00

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11 **Fee/Employment Objections**

12 30. The services performed by Bingham in this category during the
13 Current Period relate to the review of fee applications and monthly fee
14 statements filed by various professionals hired in these cases on an ongoing
15 basis.

16
17 **Individuals Providing Services On Project, Time Spent and Fees**
18 **Requested^{17/}**

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<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
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20 ^{16/} Please see Exhibit A for the chronological compilation of time entries
21 attributable to this project category.

22 ^{17/} Please see Exhibit A for the chronological compilation of time entries
23 attributable to this project category.

Casher, Richard F.	\$425.00	<u>0.60</u>	<u>\$255.00</u>
TOTAL:		0.60	\$255.00

Business Operations

31. The services performed by Bingham in this category relate to a general analysis and monitoring of the Debtors' ongoing financial performance, as well as assessing the economic viability and impact of various actions proposed by the Debtors. The services performed by Bingham in this category during the Current Period can be summarized as follows:

a. Review and analysis of the Employment Agreement of J. Michael Jenkins.

b. Review of the periodic financial reports filed by the Debtors, as well as the Debtors' financial projections and review of analysis of the Debtors' financial performance prepared by the Committee's financial advisors.

Individuals Providing Services On Project, Time Spent and Fees Requested^{18/}

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	1.60	\$680.00

^{18/} Please see Exhibit A for the chronological compilation of time entries attributable to this project category.

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Deveno, Mark W.	\$155.00	0.70	\$108.50
Smits, Anthony J.	\$350.00	<u>0.30</u>	<u>\$105.00</u>
TOTAL:		2.60	\$893.50

Asset Disposition

32. A majority of the time expended by Bingham during the Current Period in this category related to monitoring and providing input into the Debtors' proposed sale of substantially all of its assets to a third party bidder. As part of this process, the Committee reviewed and evaluated various bid proposals received, and reviewed and analyzed the Asset Purchase Agreement among the Debtors, as sellers, and GRO. The Committee also continued their ongoing analysis, with the help of Houlihan Lokey, to evaluate the feasibility of various alternative recovery strategies.

33. Bingham also participated telephonically in three regular monthly court hearings at which various motions concerning disposition of estate assets were heard and fielded numerous telephone calls from bondholders concerning the Asset Purchase Agreement.

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2 **Individuals Providing Services On Project, Time Spent and Fees**
3 **Requested^{19/}**

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<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	<u>8.30</u>	<u>\$3,527.50</u>
TOTAL:		8.30	\$3,527.50

6 **Asset Analysis and Recovery**

7
8 34. The services performed by Bingham in this category relate
9 primarily to Bingham's research and analysis of potential avoidance claims
10 that the Debtors and the Committee may have against creditors and third
11 parties in order to prepare a comprehensive report for the Committee.

12 **Individuals Providing Services On Project, Time Spent and Fees**
13 **Requested^{20/}**

14

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	6.00	\$2,550.00
Deveno, Mark W.	\$165.00	<u>3.50</u>	<u>\$577.50</u>
TOTAL:		9.50	\$3,127.50

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20 ^{19/} Please see Exhibit A for the chronological compilation of time entries
21 attributable to this project category.

22 ^{20/} Please see Exhibit A for the chronological compilation of time entries
23 attributable to this project category.
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2 **Claims Administration and Objections**

3 35. The services performed by Bingham in this category related
4 primarily to reviewing a stipulation regarding BMAC's expenses and speaking
5 with Debtors' counsel regarding the 1996 Lenders' priority claims.
6

7 **Individuals Providing Services On Project, Time Spent and Fees**
8 **Requested^{21/}**

9

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	<u>0.70</u>	<u>\$297.50</u>
TOTAL:		0.70	\$297.50

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12 **Litigation**

13 36. The vast majority of the services performed by Bingham in this
14 category relate to preparation for confirmation litigation and related discovery.

15 Services performed by Bingham included:

16 a. extensive discovery planning, scheduling and prosecution;
17 related review of extensive document production;

18 b. the preparation of subpoenas and document production
19 requests directed to the Debtors, J. Michael Jenkins, General Electric Capital
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22 ^{21/} Please see Exhibit A for the chronological compilation of time entries
23 attributable to this project category.
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2 Corporation, Bank of America, Bell Atlantic Credit Corporation, Ernst &
3 Young, Lazard Freres, GRO and McDonald's Corporation;

4 c. conduct depositions of Messrs. Jenkins, Uhring, Gioia,
5 Ernst & Young, Bell Atlantic Credit Corp., defend deposition of Alan Fragen
6 (Houlihan Lokey Howard & Zukin) and participate in deposition of Thomas
7 Day (Loomis Sayles & Co.);

8 d. resolution of discovery and related procedural issues with
9 1996 Lenders;

10 e. analysis of the Committee's litigation options, strategy and
11 positions; and

12 f. negotiation and documentation of global settlement.

13 **Individuals Providing Services On Project, Time Spent and Fees**
14 **Requested^{22/}**

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Anker, Nicole J.	\$165.00	30.50	\$5,032.50
Casher, Richard F.	\$425.00	157.10	\$66,767.50
Curran, Theresa L.	\$110.00	3.10	\$341.00
Dailey, Renee M.	\$155.00	7.60	\$1,178.00
Deveno, Mark W.	\$165.00	52.20	\$8,613.00
Dowd, Miriam	\$155.00	12.00	\$1,860.00
England, Sam	\$120.00	6.00	\$720.00

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22 ^{22/} Please see Exhibit A for the chronological compilation of time entries
23 attributable to this project category.
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Finn, Gerard P.	\$225.00	171.10	\$38,497.50
Flynn, Donald	\$120.00	1.00	\$120.00
Friedman, Judith H.	\$225.00	32.30	\$7,267.50
Gallup, Jane H.	\$130.00	20.00	\$2,600.00
Gustafson, Anna M.	\$225.00	13.60	\$3,060.00
Gustafson, Anna M.	\$190.00	7.10	\$1,349.00
LaFreniere, Nora E.	\$175.00	38.10	\$6,667.50
Lambert, Paul J.	\$400.00	338.40	\$135,360.00
Lemire, Roger A.	\$135.00	0.80	\$108.00
Miller, Linda J.	\$130.00	2.30	\$299.00
Nye, Gregory W.	\$325.00	305.90	\$99,417.50
Percy, Rachel	\$120.00	28.00	\$3,360.00
Shah, Rupal S.	\$165.00	6.90	\$1,138.50
Snow, Christopher S.	\$180.00	0.80	\$144.00
Snow, Christopher S.	\$165.00	1.20	\$198.00
Stolle, Ria M.	\$105.00	0.20	\$21.00
Tarshis, Emily Ann	\$125.00	<u>0.40</u>	<u>\$50.00</u>
TOTAL:		1,236.60	\$384,169.50

Plan and Disclosure Statement

37. The broad nature of the services included in this category include the preparation of objections to the debtors' disclosure statement and the participation in the disclosure statement hearing on February 15, 2000, at which time the Committee's objections were consensually resolved; preparation of detailed objections to confirmation of the debtors' plan of reorganization and related legal research and analysis; preparation of supplemental objections to confirmation; participation in preliminary

confirmation hearing held on April 4, 2000; review various drafts of the debtors' revised plan of reorganization, confirmation order and findings of fact and conclusions of law concerning confirmation.

Individuals Providing Services On Project, Time Spent and Fees Requested^{23/}

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Brunstad, G. Eric	\$325.00	0.60	\$195.00
Casher, Richard F.	\$425.00	113.90	\$48,407.50
Dailey, Renee M.	\$165.00	4.60	\$759.00
Deveno, Mark W.	\$165.00	35.90	\$5,923.50
Gustafson, Anna M.	\$225.00	163.20	\$36,720.00
Gustafson, Anna M.	\$190.00	19.3	\$3,667.00
Hall, Kevin B.	\$125.00	0.40	\$50.00
Lambert, Paul J.	\$400.00	10.20	\$4,080.00
Lemire, Roger A.	\$135.00	0.40	\$54.00
Nye, Gregory W.	\$325.00	4.70	\$1,527.50
Pereira, Helder P.	\$165.00	2.50	\$412.50
Shah, Rupal S.	\$165.00	14.80	\$2,442.00
Smits, Anthony J.	\$275.00	0.80	\$220.00
Smits, Anthony J.	\$350.00	1.70	\$595.00
Snow, Christopher S.	\$180.00	<u>0.40</u>	<u>\$72.00</u>
TOTAL:		373.40	\$105,125.00

^{23/} Please see Exhibit A for the chronological compilation of time entries attributable to this project category.

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3 **General Review of Pleadings, Correspondence, etc.**

4 38. The services performed by Bingham in this category relate
5 primarily to the review and consideration of the numerous pleadings filed in
6 the Debtors' Chapter 11 Cases and reviewing electronic pleading notices issued
7 by the Court, all of which was necessary for monitoring the Chapter 11 Cases
8 on a regular and ongoing basis.

9 **Individuals Providing Services On Project, Time Spent and Fees**
10 **Requested^{24/}**

<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	8.00	\$3,400.00
Smits, Anthony J.	\$350.00	<u>0.50</u>	<u>\$175.00</u>
TOTAL:		8.50	\$3,575.00

14 **Non-Working Travel Time**

15 39. The time reflected in this category represents time spent by
16 Bingham timekeepers while traveling and while not working.
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20 ^{24/} Please see Exhibit A for the chronological compilation of time entries
21 attributable to this project category.
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2 **Individuals Providing Services On Project, Time Spent and Fees**
3 **Requested^{25/}**

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<u>Attorney/Paralegal</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Casher, Richard F.	\$425.00	22.00	\$9,350.00
Friedman, Judith H.	\$225.00	0.50	\$112.50
Lambert, Paul J.	\$400.00	6.50	\$2,600.00
Nye, Gregory W.	\$325.00	<u>2.80</u>	<u>\$910.00</u>
TOTAL:		31.80	\$12,972.50

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10 **General Court Attendance**

11 40. No services were rendered in respect of this category.
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13 **IDENTIFICATION OF TIMEKEEPERS**

14 41. Identification information concerning professionals and
15 paraprofessionals working on the within case was supplied in the prior interim
16 fee applications. Identification information is supplied below for the
17 professionals and paraprofessionals who worked on the Chapter 11 Cases for
18 the first time during the Current Period.

19 42. A 1988 graduate of Mount Holyoke College, Ria M. Stolle is the
20 Practice Support Manager of Bingham.
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22 ^{25/} Please see Exhibit A for the chronological compilation of time entries
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2 43. Jane H. Gallup is a paralegal at Bingham. She received her
3 undergraduate degree from Boston University in 1970 and her M.S. in Library
4 Science from Simmons College in 1976.

5 **AMOUNT REQUESTED AS FINAL ALLOWANCE**

6 44. Bingham deems the fair and reasonable value of its services for
7 the Current Period to be \$562,710.50. For purposes of this Application,
8 Bingham has computed the Fees on the basis of its regular hourly rates
9 applicable to the performance of legal services unrelated to the Chapter 11
10 Cases. Bingham's average hourly billing rate, or "lodestar" rate (excluding
11 legal assistants), during the Current Period was \$318.29.

12 45. Bingham has made every effort to have services for the
13 Committee performed by qualified attorneys charging the lowest hourly rates
14 consistent with the level of service and efficiency required.

15 46. Bingham requests that the Court award Bingham compensation
16 of \$562,710.50 in Fees for professional services rendered during the Current
17 Period. Pursuant to the Procedural Order, Bingham submitted monthly
18 statements to the Debtors and the U.S. Trustee for services in the aggregate
19 amount of \$535,962.50 and expenses in the aggregate amount of \$52,850.23 in
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attributable to this project category.
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 2 respect of the Current Period.^{26/} As of the date hereof, Bingham has been paid
 3 by the Debtors the sum of \$295,510.00 in respect of such fees and \$27,039.30
 4 in respect of such expenses. A summary of such payments and hold-backs is
 5 set forth below:

	February 2000	March 2000	April 2000	May 2000	Total
Fees Requested	\$153,265.00	\$216,122.50	\$166,575.00	\$26,748.00	\$562,710.50
Fees Paid	\$122,612.00	\$172,898.00	\$0.00	\$0.00	\$295,510.00
Fees Held Back (20%)	\$ 30,653.00	\$ 43,224.50	\$0.00	\$0.00	\$73,877.50
Expenses Requested	\$ 10,727.55	\$ 16,311.75	\$ 25,810.93	\$ 3,444.59	\$56,294.82
Expenses Paid	\$ 10,727.55	\$ 16,311.75	\$ 0.00	\$0.00	\$27,039.30

15 47. In addition to the payments received in respect of the Current
 16 Period as described in the immediately preceding paragraph, Bingham
 17 previously received payments for fees and expenses in the aggregate amount of
 18 \$1,200,464.12, which sum was awarded pursuant to this Court's orders in
 19 respect of Bingham's four prior fee applications, representing \$1,114,401.50 in
 20 respect of fees and \$86,062.62 in respect of expenses.

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 22 ^{26/} Bingham submitted monthly statements for February, March and
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2 48. In accordance with Federal Rule of Bankruptcy Procedure 2016,
3 Bankruptcy Code Section 504 and the U.S. Trustee's Guidelines, no payments,
4 other than those set forth above, have heretofore been made or promised to
5 Bingham for services rendered or to be rendered in any capacity whatsoever in
6 connection with the Chapter 11 Cases. No agreement or understanding exists
7 between Bingham and any other person or entity for a division of
8 compensation or reimbursement received or to be received herein or in
9 connection with the Chapter 11 Cases.

10 49. Bingham has disbursed and/or incurred the Expenses as expenses
11 incurred in the ordinary course of rendering professional services during the
12 Current Period. Such expenses were necessary and reasonable in scope and
13 amount and do not include a charge for profit. Accordingly, Bingham hereby
14 requests reimbursement with respect to the Expenses in the amount of
15 \$56,294.82.

16 50. Certain of the disbursements for which Bingham seeks
17 reimbursement are described below:

18 a. Photocopying - charged by Bingham at \$.20 per page;
19 expedited copies of court documents were billed by third party vendor where
20 indicated;

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23 April, 2000. Bingham did not submit a monthly statement for May 2000.
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reimbursement of the Current Period Expenses in the amount of \$56,294.82;
(d) determining that the aggregate award to Bingham of fees and expenses in this case in the amount of \$1,872,383.94^{27/} (representing all fees and expenses previously awarded to Bingham in this case, the Current Period Fees, the Current Period Expenses and the Adjusted Retained Fees) constitutes a final award; and (e) granting such other and further relief as is just and equitable.

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^{27/} Bingham holds a retainer in the amount of \$60,710.30 (the “**Prepetition Retainer**”) paid to it by Boston Chicken, Inc., prior to the Petition Date in connection with Bingham’s service as counsel to the Ad Hoc Committee (as defined herein). Bingham requests that all sums applied for in this Application be paid to it net of the Prepetition Retainer and that Bingham be permitted to retain the Prepetition Retainer.

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DATED, this 10th day of July, 2000.

BINGHAM DANA LLP
Evan D. Flaschen
Richard F. Casher
Anthony J. Smits
One State Street
Hartford, Connecticut 06103-3178
Counsel for Unsecured Creditors' Committee

By: /s/Richard F. Casher
Richard F. Casher (CT10020)

Copy of the foregoing was served by
U.S. Mail on the 10th day of July, 2000, to:
All Parties on the annexed Service List

 /s/Richard F. Casher
Richard F. Casher

**[Signature page for Application for Final Allowance of Compensation
and Reimbursement of Expenses of Bingham Dana LLP, as Attorneys
for the Official Committee of Unsecured Creditors]**

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SERVICE LIST

Golden Restaurant Operations, Inc.
Attention: Randall J. Miller, General Counsel
14123 Denver West Parkway
P.O. Box 4086
Golden, CO 80401-4086
Debtor

Akin, Gump, Strauss, Hauer & Feld, L.L.P.
Attention: H. Rey Stroube, III, Esq.
711 Louisiana
Suite 1900
Houston, TX 77002
Attorneys for Debtor

United States Trustee
Attn: Richard Cuellar, Esq.
2929 N. Central Avenue, Rm. 700
Phoenix, AZ 85012

Gerald K. Smith, Esq.
Susan M. Freeman, Esq.
Lewis and Roca LLP
40 North Central Avenue
Phoenix, AZ 85004-4429
Plan Trustee

Richard Lehmann
Bond Investors Association
6175 N.W. 153 Street
Suite 201
Miami Lakes, FL 33014
Chairman of Unsecured Creditors' Committee

Donald L. Gaffney, Esq.
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, AZ 85004-0001
Co-Counsel for Unsecured
Creditors' Committee