

1 Lawrence Bass, Esq.  
Brownstein, Hyatt & Farber, P.C.  
2 410 Seventeenth Street  
Twenty Second Floor  
3 Denver, CO 80202-4437  
(303) 223-1100  
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2003 OCT 10 PM 12:35

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

7 In re: ) No. 98-12547-12570 ECFCGC  
8 BCE WEST, L.P., et al., ) Chapter 11  
9 Debtors. ) **FINAL APPLICATION FOR**  
10 ) **ALLOWANCE OF COMPENSATION AND**  
11 EID 38-3196719 ) **REIMBURSEMENT OF EXPENSES OF**  
12 ) **BROWNSTEIN HYATT & FARBER, P.C.**  
13 ) **FOR SERVICES RENDERED AND**  
14 ) **EXPENSES INCURRED AS SPECIAL**  
15 ) **REAL ESTATE COUNSEL FOR DEBTORS**

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Brownstein Hyatt & Farber, P.C. ("BHF" or the "Firm"), special real estate counsel for BCE West, L.P. and related entities ("Debtors"), respectfully submits this Final Application for the allowance and payment of compensation and reimbursement of expenses incurred on behalf of the Debtors. By this Application, the Firm seeks (i) the final allowance of all fees and expenses that have heretofore been allowed on an interim basis, (ii) the final allowance of fees and expenses that have not been included in prior interim applications, and (iii) an order directing the Reorganized Debtor and/or the Plan Trustee to pay to the Firm all fees and expenses allowed on a final basis that to date have not been paid.

21 **A. INFORMATION ABOUT APPLICANT AND APPLICATION**

22 **1. Relevant Dates and Nature of Application**

23 a. On October 5, 1998, BCE West, L.P. and 23 of its related  
24 affiliates filed their voluntary chapter 11 petitions in the United States Bankruptcy Court for the  
25 District of Arizona (the "Court").  
26

1 b. An order for joint administration of the twenty four cases was  
2 entered on October 5, 1998.

3 c. No trustee or examiner has been appointed for the estates of  
4 the Debtors, and the Debtors are operating their businesses and managing their property as debtors  
5 in possession.

6 d. By order of this Court entered on or about February 4, 1999,  
7 the Debtors were authorized to employ BHF as their special real estate counsel, nunc pro tunc to  
8 October 5, 1998 (the "Ordinary Course Order"). Pursuant to the terms of the Ordinary Course Order,  
9 BHF was authorized to invoice the Debtors on a monthly basis for services rendered and expenses  
10 incurred, and to receive payment of up to \$30,000 from the Debtors on a regular basis, without  
11 further Court order. Thereafter, BHF was authorized to receive 80% of fees and 100% of expenses  
12 incurred upon presentation of invoices, with payment of the balance (ie. the remaining 20% of the  
13 invoiced fees) to be subject to application to this Court and the entry of an order approving such  
14 application.

15 e. Compensation is sought pursuant to the provisions of 11 U.S.C.  
16 § 330(a)(1), and under no other provision of the Bankruptcy Code.

17 **2. Terms and Conditions of Employment**

18 a. BHF has no agreement of any kind, express or implied, to  
19 divide or share with any other person or entity any portion of the compensation sought or to be  
20 received herein by it except among shareholders of the firm. There is on file herein the necessary  
21 statement required by Bankruptcy Rule 2016 and 11 U.S.C. § 329, which is incorporated herein by  
22 reference.

23 b. The source of compensation for the fees and expenses presently  
24 sought by this Application will be estate funds or funds in the possession or under control of the Plan  
25 Trustee.

26 c. BHF received no retainer prior to the commencement of these

1 chapter 11 cases. BHF has no budgetary or other limitation on its fees.

2 d. The services for which compensation is requested were  
3 rendered on behalf of the Debtors and debtors in possession pursuant to 11 U.S.C. §§ 327(e), 330(a),  
4 331, and 503(a) and (b), and Rule 2016(a) of the Fed. R. Bankr. P., and in compliance with the terms  
5 of the Ordinary Course Order and the Guidelines of the Office of the United States Trustee for the  
6 District of Arizona.

7 e. The compensation sought hereby is based upon BHF's normal  
8 hourly billing rates in effect at the time the services were rendered, and upon rates charged by  
9 comparably skilled practitioners in cases other than those under Title 11.

10 **3. Prior Interim Applications and Allowances<sup>1</sup>**

11 a. On or about June 8, 1999, BHF filed its First Interim Fee  
12 Application seeking the allowance of \$77,934.50 as interim compensation for services rendered for  
13 the period from the commencement of its services through May 19, 1999. On June 30, 1999, this  
14 Court made and entered its Order allowing interim compensation of \$77,934.50, and directing the  
15 Debtors to pay the unpaid portion of \$30,286.06 to BHF. That interim allowance has been paid to  
16 BHF.

17 b. On or about October 23, 1999, BHF filed its Second Interim  
18 Fee Application seeking the allowance of \$62,889.56, representing the unpaid portion of fees  
19 incurred for the period from May 20, 1999 through September 15, 1999. On or about November 29,  
20 1999, this Court made and entered its Order allowing BHF interim fees of \$273,732.48 for services  
21 rendered during said period, and directing the Debtors to pay the unpaid portion of \$62,889.56 to

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23 <sup>1</sup> Because of the voluminous nature of the interim fee applications, they are not  
24 attached hereto. Rather, they are on file with the Clerk of the Bankruptcy Court, and the Court is  
25 asked to take judicial notice of them. Parties in interest may view the interim fee applications during  
26 normal business hours in the Office of the Clerk of the Bankruptcy Court.

1 BHF. Of that amount, \$56,441.74 has been paid to BHF.

2 c. On or about June 5, 2000, BHF filed its Third Interim Fee  
3 Application seeking the allowance of \$160,533.68 , representing fees and expenses incurred for the  
4 period from September 16, 1999 through April 30, 2000. On June 27, 2000, this Court made and  
5 entered its Order allowing BHF interim fees as requested, and directing the Debtors to pay the sum  
6 of \$126,144.95 to BHF, representing the unpaid portion of said interim allowance. To date, BHF  
7 has not received any portion of the \$126,144.95.

8 d. For the period from May 1, 2000 through May 26, 2000 (the  
9 Effective Date of the Debtors' Third Amended Plan filed May 3, 2000), BHF has incurred additional  
10 fees and expenses totaling \$9,264.40.<sup>2</sup> Detailed time records reflecting those fees and expenses are  
11 attached hereto as Exhibit A.

12 e. Fees and expenses incurred subsequent to May 26, 2000 will  
13 be invoiced directly to the Plan Trustee. It is BHF's understanding that post-Effective Date fees and  
14 expenses may be invoiced to and paid by the Plan Trustee in the ordinary course, without the  
15 necessity of fee applications or further Court order.

16 **B. CASE STATUS**

17 **1. Status of Plans and Disclosure Statements, Quarterly Fees and**  
18 **Monthly Operating Reports**

19 a. The Debtors' Third Amended Plan of Reorganization was  
20 confirmed by this Court's Order entered on or about May 15, 2000.

21 b. All quarterly fees have been paid to the United States Trustee.

22 c. All monthly operating expenses have been submitted to the  
23 Office of the United States Trustee.

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25 <sup>2</sup> This amount includes \$2,137.46 of fees and expenses incurred prior to May 1, 2000,  
26 which were not previously included in BHF's interim fee applications.

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**2. Accrued Administrative Expenses**

a. As of the date of this Application, BHF is unaware of any pending applications for administrative expense that have been approved by the Court.

**C. GENERAL STATEMENT REGARDING SERVICES RENDERED BY BHF**

BHF was engaged by the Debtors as special real estate counsel to assist the Debtors in their efforts to dispose of real estate interests that were determined to be unnecessary to retain as part of the Debtors' reorganization efforts. The real estate involved consists of properties that were owned in fee simple interest and that were leased by the Debtors.

Generally speaking, the services rendered by BHF for which compensation is sought hereby include, but are not limited to, the following:

- a. Negotiation and preparation of purchase and sale agreements for each property that was owned in fee;
- b. Negotiation and preparation of contracts for assignment and assumption of leasehold interests;
- c. Examination of title work and related due diligence, preparing and obtaining all necessary and appropriate releases and terminations of security instruments including, without limitation, UCC Financing Statements, collateral assignments, deeds of trust and mortgages;
- d. Preparation of all required closing documents including, without limitation, assignments, deeds, affidavits, notices, bills of sale and estoppels;
- e. Review and modification, as necessary, of closing documents prepared by other parties to sale or lease transactions;
- f. Review of general real estate documents, document control and organization;
- g. Preparation for, travel to and attendance at status and organizational conferences with the Debtors, their real estate brokers and advisors, and/or their financial

1 consultants;

2 h. Advice to the Debtors, as requested, on all aspects of the disposition  
3 of owned and leased real estate interests.

4 **D. SUMMARY OF FEES AND EXPENSES REQUESTED BY THIS FINAL**  
5 **APPLICATION**

6 By this Application, BHF seeks the final allowance of the following amounts:

7	1. First Interim Application (10/5/98-5/19/99)	\$77,934.50
8	2. Second Interim Application (5/20/99-9/15/99)	\$273,732.48
9	3. Third Interim Application (9/16/99-4/30/00)	\$160,533.68
10	4. Final period fees and expenses (5/1/00-5/26/00)	\$9,264.40
11	Total	\$521,465.06 <sup>3</sup>

12 **E. EVALUATING STANDARDS**

13 In accordance with 11 U.S.C. § 330, the foregoing amounts were calculated using the hourly  
14 rates for the attorneys and paralegals involved at the time that the services were rendered. *See also*  
15 *In Re Yermakov*, 718 F.2d 1465, 1471 (9<sup>th</sup> Cir. 1983) (“The primary method used to determine a  
16 reasonable attorneys’ fee in a bankruptcy case is to multiply the number of hours expended by an  
17 hourly rate”). This has also been referred to as the “lodestar” or basic fee which, if warranted, can  
18 be adjusted upward or downward. In that regard, the Ninth Circuit in *Yermakov* made specific  
19 references to *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5<sup>th</sup> Cir. 1974), in  
20 which the Fifth Circuit listed twelve factors which should be considered in awarding attorneys’ fees.  
21 These “*Johnson* factors” have been referred to and utilized by many courts in considering and  
22 awarding attorneys’ fees in bankruptcy cases. *See In Re Nucorp Energy, Inc.*, 754 F.2d 655 (9<sup>th</sup> Cir.

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24 <sup>3</sup> Of this amount, to date BHF has received interim payments of \$349,607.89. Thus,  
25 of the total final fee and expense allowance requested by this Application, the sum of \$171,857.17  
26 remains unpaid.

1 1985).

2                   The Ninth Circuit Bankruptcy Appellate Panel has held that the “lodestar”  
3 approach, coupled with consideration of the “*Johnson* factors” is the appropriate standard to be  
4 applied in awarding fees in a bankruptcy case. *See In re Powerine Oil Co.*, 71 Bankr. 767 (Bankr.  
5 9<sup>th</sup> Cir. 1986).

6                   The provisions of §330(a) place a premium on the timeliness of administration  
7 of the case. Compensable services must be “performed within a reasonable amount of time  
8 commensurate with the complexity, importance and nature of the problem, issue or task addressed.”  
9 11 U.S.C. § 330(a)(3)(A). BHF believes all services have been provided in a timely basis.

10                   The results obtained by BHF during the course of its employment illustrate  
11 that BHF:

- 12                   ● Used the skill required to perform the legal services properly;
- 13                   ● Provided services necessary to the administration of the case; and
- 14                   ● Performed the services within a reasonable amount of time  
15                   commensurate with the complexity, importance and nature of each  
16                   task.

17                   Based upon the foregoing, BHF respectfully requests that the Court enter an  
18 order allowing it final compensation for professional services rendered and expenses incurred by it  
19 during the course of its employment as special real estate attorneys for Debtors in the sum of  
20 \$521,465.06, and directing the Reorganized Debtors and/or the Plan Trustee to forthwith pay any

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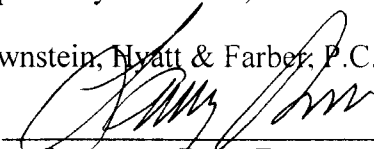
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unpaid portion thereof to BHF.

Dated this 7<sup>th</sup> day of July 2000.

Respectfully submitted,

Brownstein, Hyatt & Farber, P.C.

By: 

Lawrence Bass, Esq.  
410 Seventeenth Street, Twenty Second Floor  
Denver, CO 80202-4437  
(303) 223-1100

COPY of the foregoing  
mailed this 7<sup>th</sup> day of  
July 2000, to:

Office of the U.S. Trustee  
2929 North Central Avenue, Suite 700  
P.O. Box 36170  
Phoenix, AZ 85067-6170

H. Rey Stroube, III  
Akin, Gump, Strauss, Hauer & Feld, LLP  
1900 Pennzoil Place — South Tower  
711 Louisiana  
Houston, TX 77002

Gerald K. Smith, Esq.  
Lewis and Roca LLP  
40 North Central Avenue  
Phoenix, Arizona 85004-4429



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF ARIZONA

NOTICE THAT EXHIBITS TO THIS ELECTRONICALLY FILED DOCUMENT ARE NOT ATTACHED.

There were one or more exhibits and/or other attachments filed with this pleading that consisted of pages too numerous for the clerk to scan and electronically file as part of the pleading. Paper copies of these exhibits are maintained at the Office of the Clerk. They may be reviewed at that office 9:00 a.m. to 4:00 p.m., Monday to Friday, at 2929 North Central Avenue, Ninth Floor, Phoenix, Arizona, or you may arrange to obtain copies from the filing attorney.

KEVIN E. O'BRIEN  
CLERK OF COURT