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4 Gerald K. Smith, Plan Trustee

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

7 In Re:) Chapter 11
8 BCE WEST, L.P., *et al.*,)
9 Debtors.) Case Nos. 98-12547
through 98-12570-ECF-CGC
Jointly Administered
10 EID # 38-3196719) **FIRST APPLICATION OF**
11) **GERALD K. SMITH AS TRUSTEE**
12) **OF THE BOSTON CHICKEN**
13) **PLAN TRUST FOR**
14) **COMPENSATION FOR THE**
15) **PERIOD SHORTLY BEFORE**
16) **APPOINTMENT THROUGH**
17) **JANUARY 31, 2001**

15 Gerald K. Smith, for his application for fees, respectfully represents as
16 follows:

- 17 1. The Chapter 11 Plan of BCI and its 23 affiliates was confirmed
18 May 15, 2000. The Confirmation Order became effective May 26, 2000.
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20 2. As provided in the Third Modified Plan dated May 3, 2000, Gerald K.
21 Smith was nominated as Trustee and the Court approved that nomination and appointed
22 Gerald K. Smith as Trustee by Order dated May 15, 2000.
23
24 3. Prior to the appointment, time was spent working with employees of
25 Boston Chicken, Inc. and Akin, Gump, Strauss, Hauer & Feld, L.L.P., general counsel for
26 the debtors, preparing for matters that had to be dealt with promptly after confirmation of

1 the Plan and appointment of the Trustee. As a result, approximately 28.2 hours were spent
2 on Trust affairs the Trustee prior to by appointment prior to his appointment as Trustee.

3
4 4. Pursuant to the Plan, this Court is to review and approve any
5 compensation requested by the Trustee. *See* Paragraph IV(B), page 12, of the Third
6 Modified Plan.

7 5. An itemization of the Trustee's time, through January 2001 is
8 attached as Exhibit A. The Trustee has spent 1,164.7 hours for which compensation at the
9 Trustee's then standard hourly rate of \$350 is requested for all but 1.9 hours noted in the
10 itemization. The time has been kept and presented under three categories, Administration,
11 Claims Investigation and Einstein/Noah Bagel Corp. The compensation requested is
12 \$406,980.
13

14 6. In a general sense, the time on matters other than Einstein/Noah
15 Bagel Corp. concern the overall administration and windup of the affairs of a large
16 business. Although some information had been accumulated prior to confirmation as to
17 priority and secured claims, much remained to be done. In addition, it was necessary to
18 oversee the closing of 87 restaurants and the sale of personal property at more than 100
19 closed restaurants. It was also necessary to assemble a staff and hire professionals to wind
20 up the corporations, prepare and file hundreds of tax returns, conduct the investigation of
21 claims of the estate, hire counsel to pursue such claims, sell five parcels of real estate,
22 process hundreds of administrative claims, and arrange for the preparation and filing of
23 Form 5500's as to the 401(k) plans, arrange for the necessary audit of such plans, process
24 and oversee the preparation and distribution of thousands of W-2's, W-3's, and 1099's,
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1 Copy of the foregoing served
via e-mail and regular mail
2 this 15th day of February, 2001 to:

3 Boston Chicken Plan Oversight Committee List

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6 /s/ Maureen Riordan

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