

U.S. COURTS

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Attorneys for Bank of America
National Trust and Savings Association,
successor by merger to Bank of America Idaho, N.A.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

IN RE:)	Chapter 11
)	Case No. 96-3050 ACH
SAWTOOTH ENTERPRISES, INC.,)	
dba The Buckin' Bagel)	
)	MOTION FOR RELIEF FROM
Debtor.)	AUTOMATIC STAY (11 U.S.C.
)	§ 362(d), F.B.R. 4001,
)	LOCAL RULE 4001.2)

Bank of America National Trust and Savings Association,
successor by merger to Bank of America Idaho, N.A., ("Bank of
America"), by and through its attorneys of record, Hawley Troxell
Ennis & Hawley LLP, hereby moves that it be granted relief from
automatic stay for cause, to allow it to continue litigation
against the Debtor, in an action which was filed in the District
Court of the Fourth Judicial District of the State of Idaho, in
the County of Ada, on September 27, 1996.

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BANK OF AMERICA IS A SECURED CREDITOR OF DEBTOR

1. Bank of America is a secured creditor of Debtor. All of the loan documents evidencing Bank of America's secured claim are attached to the Proof of Claim filed with the Bankruptcy Court, a true and correct copy of which is attached hereto as Exhibit A.

2. Because of Sawtooth's failure to make the payments as required under, and to otherwise comply with, the terms of Term Loan #18, Term Loan #42, Term Loan #59 and Revolving loan #34, (collectively the "Loans") Bank of America declared the entire outstanding balance of all Loans to be due and payable in full (except for Revolving Loan #34, which had already matured and become due and payable in full according to its terms) and made demand for payment of the outstanding balance of all Loans, by letter to Sawtooth dated July 22, 1996. On or about August 16, 1996, Bank of America restated by letter its demand for payment in full of all obligations to Sawtooth.

3. Despite such demand, Sawtooth refused to pay the amount due on the Loans.

STATE COURT COMPLAINT

4. On or about September 27, 1996, Bank of America filed a Verified Complaint against Sawtooth, Austin E. Stewart II, The Estate of Lee D. Pesky, and Alan D. Pesky, for collection of

amounts owed to Bank of America. The Verified Complaint was filed in the District of the Fourth Judicial District of the State of Idaho, In and For the County of Ada, Case No. CV OC 9605132D ("Complaint"). A true and correct copy of the Complaint is attached hereto as Exhibit B.

5. Bank of America filed the Complaint against Austin Stewart and Lee Pesky based on Commercial Guaranties executed on or about January 31, 1994 by those parties in favor of Bank of America, copies of which are attached to the Complaint. Pursuant to the terms of the Commercial Guaranties, the Third Parties unconditionally guaranteed and promised to pay to Bank of America any and all indebtedness of Sawtooth. The amount of the Commercial Guaranties is unlimited.

6. Lee Pesky became deceased on November 6, 1995. Alan Pesky is the duly appointed personal representative of the Estate of Lee Pesky.

7. As of the date of the filing of the Complaint, the following sums were due and payable pursuant to the terms of the Loans:

A. Term Loan #18:

Principal	\$ 81,526.60
Interest to and including September 3, 1996	\$ 589.67
TOTAL	\$ 82,116.27

Interest continued to accrue on the principal balance at the default rate of \$40.20 for each day from and including September 3, 1996, until Term Loan #18 is paid.

B. Term Loan #42:

Principal	\$162,889.85
Interest to and including September 3, 1996	\$ 1,597.89
TOTAL	\$164,487.74

Interest continued to accrue on the principal balance at the default rate of \$66.27 for each day from and including September 3, 1996, until Term Loan #42 is paid.

C. Term Loan #59:

Principal	\$133,211.79
Interest to and including September 3, 1996	\$ 1,097.18
TOTAL	\$134,308.97

Interest continued to accrue on the principal balance at the default rate of \$47.85 for each day from and including September 3, 1996, until Term Loan #59 is paid.

D. Revolving Loan #34:

Principal	\$ 45,000.00
Interest to and including September 3, 1996	\$ 417.02
TOTAL	\$ 45,417.02

Interest continued to accrue on the principal balance at the default rate of \$17.54 for each day from and including

September 3, 1996, until Revolving Loan #34 is paid. (The \$12.64 per diem is subject to change in the event of a change in Bank of America's Prime Rate.)

8. On November 27, 1997, Sawtooth filed a Chapter 11 bankruptcy petition in the above-captioned bankruptcy. Bank of America received \$149,686.02 from the sale of certain assets securing the Loans, which assets were sold through this Bankruptcy proceeding.

9. On March 5, 1997, the State Court set a jury trial for March 30, 1998 and set various discovery and motion deadlines.

10. On April 29, 1997, Bank of America filed a Motion to Amend the Verified Complaint to add two additional third parties, Alan and Wendy Pesky, based upon assets that may have been distributed and received by Alan and Wendy Pesky, from the Estate of Lee Pesky. On May 14, 1997, the state court granted Bank of America's Motion to Amend the Verified Complaint.

11. The third party Defendants have denied liability and asserted various affirmative defenses such as payment by Sawtooth, extinguishment of the guaranty, automatic stay, and release of the guaranty.

12. Bank of America has commenced discovery against the other parties named in the Complaint.

GROUNDS FOR RELIEF

13. Absent Sawtooth's filing of the bankruptcy petition, Bank of America would have conducted discovery against Sawtooth and moved for summary judgment, liquidating the amount owed by Sawtooth and the Guarantors.

14. Bank of American is entitled to relief from automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1), to pursue the state court action against Sawtooth to enable Bank of America to engage in discovery with Sawtooth and to obtain a liquidated judgment. *See* COLLIER ON BANKRUPTCY, ¶ 362.07[3][a] (15th ed. Rev. 1997).

15. In determining whether a creditor should be allowed to commence or continue a pending action in another forum, courts consider a variety of factors, including: (1) whether the estate or the debtor will suffer great prejudice if the suit is allowed to proceed; (2) the impact of continuation of the stay on the movant and on other parties; (3) judicial economy and the need for expeditious and economical determination of the litigation between the parties; (4) whether the action essentially involves third parties; and (5) whether the relief will result in partial or complete resolution of the issues. *In re Kansas Psychiatric Institutes, Inc.*, 186 B.R. 723 (Bkrtcy. Kan. 1995).

16. In this case the factors weigh in favor of granting relief from automatic stay to Bank of America.

a. The estate of Sawtooth will not suffer great prejudice if Bank of America is allowed to continue the state action against the Debtor and Guarantors. The primary purpose behind the complaint is to seek collection from the Guarantors for the deficiency over and above the secured value of the collateral. If Bank of America prevails against the Guarantors, the estate will benefit, since Bank of America's unsecured claim will be paid by third parties.

b. The stay substantially prejudices Bank of America. In order to prevail against the Guarantors, Bank of America needs to establish the amount of the debt, that it has not been paid by Sawtooth, and other important facts that only Sawtooth can substantiate.

c. It does not promote judicial economy to disallow Bank of America the right to continue the action against Sawtooth in state court. Allowing Bank of America the right to continue the state action will avoid the necessity of filing a separate action in bankruptcy to establish the amount of the debt and the default still due and owing.

d. This action essentially deals with third parties, in that Bank of America is primarily looking for payment from the Guarantors, but Bank of America needs

the participation of Sawtooth in order to establish its debt and refute the third parties' affirmative defenses.

e. Last, it is probable that the relief will result in complete resolution of the issues. If Bank of America prevails and recovers against the Guarantors, it will withdraw the unsecured portion of its claim against Sawtooth's estate.

17. Bank of America limits its request for relief against Sawtooth to the ability to pursue discovery against Sawtooth and to liquidate the amount of Bank of America's claim. Bank of America will return to Bankruptcy Court to enforce its judgment through the claims allowance process, if necessary. *see In re Stephen E. Cole*, 202 B.R. 356, 362 (1996).

18. Sufficient cause exists in this case to allow Bank of America to continue its State action against Sawtooth.

DISCLOSURES

19. Pursuant to Rule 4001.2 of the Local Bankruptcy Rules, any party in interest may oppose this motion by filing and serving on the moving party a written objection thereto at least five days prior to the preliminary hearing. The objection shall reasonably identify those matters contained in the motion which are to be at issue, and any other basis for opposition to the

motion. Absent the filing of a timely response, the Court may grant the relief sought without a hearing. The written objection need not be filed if the moving party sets a preliminary hearing for less than 20 days after the filing of the motion. However, the opposing party must be prepared to present the information required by this rule at the preliminary hearing.

20. Pursuant to Rule 4001.2 of the Local Bankruptcy Rules and 11 U.S.C. § 362(c),

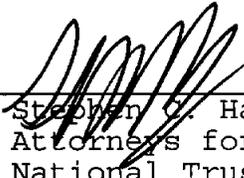
30 days after a request under subsection (b) of this section [362] or relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the Court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section.

WHEREFORE Bank of America prays that it be granted relief from automatic stay so that it may continue Idaho Case No. CV OC 9605132D, against Sawtooth to obtain a liquidation of the claim against Sawtooth, and that it have such other and further relief as is just.

DATED this 24th day of July, 1997

HAWLEY TROXELL ENNIS & HAWLEY LLP

By: _____


Stephen C. Hardesty
Attorneys for Bank of America
National Trust and Savings
Association

PROOF OF SERVICE

I hereby declare under penalty of perjury that I am a citizen of the United States, am over the age of eighteen years, and not a party to the within action; my business address is Hawley Troxell Ennis & Hawley LLP, 877 West Main Street, Suite 1000, Boise, Idaho 83702.

On this date, I served a copy of **MOTION FOR RELIEF FROM AUTOMATIC STAY** on the following parties, by placing a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the United States Post Office mail box at Boise, Idaho, addressed as follows:

See attached mailing matrix.

Executed on July 24, 1997, at Boise, Idaho.



Stephen C. Hardesty

Label_Matrix
for 96-03050
Tue Jul 22 16:40:31 MDT 1997

(106)

Sawtooth Enterprises Inc
POB 829
Boise, ID 83701

Bernie R Rakozy
POB 1738
Boise, ID 83701

Joseph M Meier
815 W Washington
Boise, ID 83702

United States Trustee
POB 110
Boise, ID 83701

Austin E Stewart, II
POB 6097
Ketchum, ID 83340

Jim Decking
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Boise, Idaho 83702

Idaho State Tax Commission
Bankruptcy Division
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Boise, ID 83722

US Attorney
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Internal Revenue Service
Chief, Special Procedures
550 W Fort St MSC 041
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LDP Leasing
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Ketchum ID 83340

Allen Pesky
PO Box 3876
Ketchum ID 83340

Peter Stern
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Shelborne VT 5482

~~Internal Revenue Service
Chief Special Procedures
550 W Fort St, MSC 041
Boise ID 83724~~

~~Bank of America
PO Box 7400
Coeur d'Alene ID 83814~~

Sysco
5710 Pan Am Ave
Boise ID 83705

Avery Construction
911 B 18th St
Boise ID 83702

Cooper Norman & Co
156 Second Ave
Twin Falls ID 83303

Margaret Mead Trust
c/o Nahas Benoit Companies
102 S 17th
Boise, Idaho 83702

Sonna Building Associates
910 Main St
Boise ID 83702

Westco
805 West 2500 S
Salt Lake City UT 84119

Kieffer Design Group
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Hayden Beverage
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US West Communications
Salt Lake City UT 84135
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State Insurance Fund
PO Box 83720
Boise ID 83720

Idaho Power
1221 W Idaho
Boise ID 83701

American Forms & Labels
910 W Amity
Boise ID 83715

Allied Bakery Equipment
270 Littlefield Ste D
S San Francisco CA 94080

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Tue Jul 22 16:40:31 MDT 1997

Mid Mountain Data Systems
11095 Executive
Boise ID 83712

Grasmick Produce
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Boise ID 83714

Associates Commercial Corp
Attn: Bankruptcy Unit
POB 141029
Irving, Texas 75014-1029

Deckers Inc
5198 Chinden Blvd
Boise ID 83714

Intermountain Gas
PO Box 64
Boise ID 83732

BS and R Equipment
PO Box 103
Twin Falls ID 83303

Swire Coca Cola
PO Box 1679
Salt Lake City UT 84110

American Yeast
3 A St
Derry NH 3038

S&G Produce
198 Locust St
Twin Falls ID 83301

Black Bear Incorporated
PO Box 2396
Ketchum ID 83340

Darigold
50 S Cole Rd
Boise ID 83709

Town Refrigeration Inc
Friedman Indust
Hailey ID 83333

Nagel Beverage
5465 Irving
Boise ID 83706

Mark Prinsler
Moffatt Thomas
911 W Idaho
Boise ID 83701

Silver Creek Electric
PO Box 2672
Hailey ID 83333

JLA-Boise Inc
505 S Cole Rd
Boise ID 83709

KECH Radio
PO Box 2158
Ketchum ID 83340

Gem Linen
403 Main Ave W
Twin Falls ID 83303-3

Wood River Journal
POB 988
Hailey, Idaho 83333

Reed's Electrical Service
PO Box 2292
Hailey ID 83333

Air Touch Cellular
8050 W Rifleman
Boise ID 83704

The Travelers Commercial
Direct Billing
Philadelphia PA 19101-2
MAIL RETURN

J Well Foodservice
5907 Clinton
Boise ID 83704

Joan Donnelly Graphic
PO Box 3946
Ketchum ID 83340

All Electric Inc
PO Box 3204
Boise ID 83703

Access Long Distance
PO Box 45469
Salt Lake City UT 84145-0

Idaho Statesman
Attn: Kelly Provant
POB 40
Boise, Idaho 83707

Yellow Freight
1405 N Olive
Meridian ID 83642

TCI Cablevision
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Seattle WA 98111

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Tue Jul 22 16:40:31 MDT 1997

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Glenn Electric
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Southern Idaho Distribution
1640 Kimberly R
Twin Falls ID 83303

City of Boise
PO Box 2760
Boise ID 83701

Ultratec Industries
291 S LaCieneg
Beverly Hills CA 90211

Kneeland Korb Collier
PO Box 249
Ketchum ID 83340

Hickey Foods
PO Box 2312
Sun Valley ID 83353

Wood River Rubbish
PO Box 130
Ketchum ID 83340

Service Master of Sun Valley
PO Box 611
Sun Valley ID 83353

Bressie Co Restaurant
7413 Mossy Cup
Boise ID 83709

Mark Knowles Architect
218 S Cole Rd
Boise ID 83709

Frito-Lay Inc
POB 660228
Dallas, Texas 75266-0228

Boise Refrigeration Service
202 W 39th St
Boise ID 83714

Allison Fine Foods
PO Box 532
Sun Valley ID 83353

Terrell Inc
2307 S Curtis
Boise ID 83705

City of Ketchum
PO Box 2315
Ketchum ID 83340

Decker's Inc
PO Box 51268
Idaho Falls ID 83405

Business as Usual
PO Box 389
Sun Valley ID

Dalice Plumbing Inc
PO Box 15835
Boise ID 83715

KLCI-FM
Box 1280
Boise ID 83701

TCA Cable TV of Sun Valley
POB 537
Ketchum, Idaho 83340-0537

Idaho Mountain Express
PO Box 1013
Ketchum ID 83340

KSKY
POB 1340
Hailey, Idaho 83333

Royal Electric Inc
999 Federal Way
Boise ID 83705

Orkin
640 Jadwin Ave
Richland WA 99352

Idaho State Sales Tax
800 Park Blvd
Boise ID 83721

AT and T Long Distance
PO Box 78225
Phoenix AZ 85062

First Security Bank
Attn: Bob Blackburn
119 N 9th
Boise ID 83701

US Bank Leasing Co
PO Box 279
Beaverton OR 97075

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for 96-03050
Tue Jul 22 16:40:31 MDT 1997

Express Building LLC
2914 Montauk Avenue
Boise ID 83709

ATT Capital Corp
150 S Luna Road #134
Carrilton TX 75006

~~US Bank of Idaho
Main Office
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Boise ID 83702~~

~~Hawley Troxell Ennis & Hawley
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Boise ID 83701~~

SEC
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Los Angeles, CA 90036

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Ketchum, ID 83340~~

~~Sonna Building Associates
c/o David E Wishney
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Boise, Idaho 83701~~

Architecture + Chartered
POB 208
Sun Valley ID 83353

Darigold, Inc
c/o Michael J Doolittle
POB 2773
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Cornelia Russo
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Ketchum, Idaho 83340-2561

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~~City of Boise
POB 8760
Boise, ID 83701~~

Ada County Treasurer
POB 2868
Boise, Idaho 83711

~~United States Trustee
POB 110
Boise, Idaho 83701~~

Christa Mautino
2407 W State #6
Boise, Idaho 83702

~~Bank of America National Trust & Sa
c/o Patrick V Collins
POB 1617
Boise, Idaho 83701~~

Blaine County Treasurer
POB 905
Hailey, Idaho 83333

Equifax RMS
POB 4908
Boise, Idaho 83711

~~United States Trustee
POB 110
Boise, ID 83701~~

~~United States Trustee~~