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Grease Spot v. Harnes Clerk's Record v. 1 Dckt. 35321

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LAW CLERK

Page 1 of 2

IN THE SUPREME COURT
OF THE STATE OF IDAHO

THE GREASE SPOT, INC.,
Plaintiff/Respondent,

vs.

RICHARD and SHERRY HARNES,
husband and wife,
Defendants/Appellants,

and

BAKER COMMODITIES, INC., Delaware
Corporation, and JOHN DOES 1-10,
Defendants.

TRANSCRIPT ON APPEAL

In the District Court of the First Judicial District of
the State of Idaho, in and for the County of Kootenai

ATTORNEY FOR APPELLANT
Michael E. Ramsden

ATTORNEY FOR RESPONDENTS
Michael Hague

SUPREME COURT DOCKET #35321

FILED - COPY

AUG - 5 2008

Supreme Court Court of Appeals
Entered on AFS by:

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC., an Idaho
Corporation,

Plaintiff/Respondent,

vs.

RICHARD and SHERRY HARNES,
husband and wife,

Defendants/Appellants,

and,

BAKER COMMODITIES, a Delaware
Corporation, and JOHN DOES 1-10,

Defendants.

CV 05-5010

SUPREME COURT DOCKET
#35321

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and
for the County of Kootenai

HONORABLE CHARLES W. HOSACK

District Judge

Attorney for Appellants

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

Cathy Victoria
DEPUTY

SUMMONS ISSUED

JUL 05 2005

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC., an Idaho
Corporation.

Plaintiff,

vs.

RICHARD and SHERRY HARNES, husband
and wife, and BAKER COMMODITIES, INC., a
Delaware corporation, and JOHN DOES 1-10,

Defendants.

)

) Case No. CV05-5010

)

) **COMPLAINT AND DEMAND FOR
JURY TRIAL**

)

) **Fee Category: A.1.**

) **Fee: \$77.00**

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Plaintiff, THE GREASE SPOT, INC., files this Complaint and alleges as follows:

PARTIES

1. Plaintiff, The Grease Spot, Inc., ("Grease Spot"), is a corporation incorporated under the laws of the State of Idaho which does business in Kootenai County.
2. Defendant, Richard Harnes, is an individual who resides in Kootenai County, and entered into an Agreement to Purchase with the Grease Spot.
3. Defendant, Sherry Harnes, is an individual who resides in Kootenai County, and entered into an Agreement to Purchase with the Grease Spot.

COMPLAINT AND DEMAND FOR JURY TRIAL-1

ASSIGNED TO
JUDGE MITCHELL
006

4. Defendant, Baker Commodities, Inc. ("Baker"), is a corporation incorporated under the laws of the state of Delaware and carries on business in the State of Idaho.

JURISDICTION AND VENUE

5. Richard Harnes, Sherry Harnes, and Baker are subject to the jurisdiction of the courts of this state for the causes of action alleged in this Complaint under Idaho Code § 5-514.

6. The damages claimed herein exceed Ten Thousand Dollars (\$10,000.00).

7. Venue is proper in Kootenai County, Idaho, under Idaho Code § 5-404.

FACTS

8. On September 1, 1999, Scott Wessling and Richard Harnes purchased the Grease Spot from Wilbur Ellis Co. The purchase price was \$300,000.00 on a six year contract.

9. On September 1, 2000, Scott Wessling, in his capacity as the president and majority shareholder of the Grease Spot, purchased Richard and Sherry Harnes' rights and interests to the Grease Spot. A true and correct copy of the Agreement to Purchase is attached hereto as Exhibit "A".

10. The Agreement to Purchase contains a non-compete provision that bars Richard and Sherry Harnes for five (5) years from being connected in any substantial manner with any firm or organization which is a competitor of the Grease Spot.

11. After the Grease Spot bought Richard and Sherry Harnes' interest in the Grease Spot, Richard Harnes continued to work for and be involved in the business operations of the Grease Spot.

12. During the years 2000, 2001, 2002, 2003 and 2004, Richard Harnes would go to Montana and do a comprehensive check of the clients' inventory, inquire about services received and relay any price changes.

13. Richard Harnes' last trip to Montana for the Grease Spot occurred in December of 2004.

14. Richard Harnes was at all times in possession of the Grease Spot's proprietary information and trade secrets, including but not limited to, the Grease Spot's customer list, source of supplies, confidential costs, price data and figures.

15. In or before February of 2005, Richard Harnes and Baker Commodities entered into a business relationship.

16. On or about February or March of 2005, Richard Harnes and John McCarthy, Baker's General Manager, took a business trip to the Grease Spot's customers and clients in Eastern Montana. At all times, John McCarthy knew that Richard Harnes provided misappropriated information about the Grease Spot's customer list, source of supplies, confidential costs, price data and figures.

17. On or about February or March of 2005, Richard Harnes and Marty Eckstein, Baker's Plant Manager, took a business trip to the Grease Spot's customers and clients in Western Montana. At all times, Marty Eckstein knew that Richard Harnes provided misappropriated information about the Grease Spot's customer list, source of supplies, confidential costs, price data and figures.

18. On or about March of 2005, the Grease Spot lost its customers and clients in Montana to Baker. The loss of business was due to a common plan and design between Baker and Richard and Sherry Harnes to misappropriate information in order to unfairly take business from the Grease Spot.

19. In the spring of 2004, Richard Harnes and Baker contacted the Grease Spot's customer, the Burger King chain of restaurants, in order for the Burger King restaurants to enter into a contract with Baker.

20. In May of 2005, the Grease Spot lost its contract with the Burger King chain of restaurants. The loss of business was due to a common plan and design between Baker and Richard and Sherry Harnes to misappropriate information in order to unfairly take business from the Grease Spot.

21. On June 27, 2005, Richard Harnes met with Ron Rowan of Beef Northwest Feeders in order to secure new business for Baker in furtherance of their common plan to use misappropriated information to take business from the Grease Spot.

COUNT I:
BREACH OF CONTRACT

22. Plaintiff realleges the allegations contained in Paragraphs 1-21 herein.

23. Richard and Sherry Harnes have breached the terms of the Agreement to Purchase signed on September 15, 2000.

24. As a direct and proximate result of such breach of the contract, the Grease Spot has suffered damages anticipated to be in an amount exceeding Ten Thousand Dollars (\$10,000.00), the exact amount which will be proven at trial.

COUNT II:
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

25. Plaintiff realleges the allegations contained in Paragraphs 1-24 herein.

26. During the relationship created by the contract between the Grease Spot and Richard and Sherry Harnes, there existed an implied covenant of good faith and fair dealing.

27. Defendants Richard and Sherry Harnes have breached the implied covenant of good faith and fair dealing with the Grease Spot by the conduct alleged herein.

28. As a direct and proximate result of Richard and Sherry Harnes' breach of the implied covenant of good faith and fair dealing, the Grease Spot has suffered damages in an amount greater than Ten Thousand Dollars (\$10,000.00).

COUNT III:
UNJUST ENRICHMENT

29. Plaintiff realleges the allegations contained in Paragraphs 1-28 herein.

COMPLAINT AND DEMAND FOR JURY TRIAL-4

30. Richard Harnes, Sherry Harnes and Baker have received the benefit of the Grease Spot's work, information and customer base without paying just compensation.

31. Richard Harnes, Sherry Harnes and Baker have been unjustly enriched by receiving the benefit of the Grease Spot's work, information and customer base without having paid the Grease Spot any compensation.

32. As a direct and proximate result, Richard Harnes, Sherry Harnes and Baker have been unjustly enriched and the Grease Spot has suffered damages in an amount to be proved at trial.

COUNT IV:
VIOLATION OF IDAHO TRADE SECRETS ACT

33. Plaintiff realleges the allegations contained in Paragraphs 1-32 herein.

34. Richard and Sherry Harnes were in possession of trade secrets that belonged to the Grease Spot.

35. Richard and Sherry Harnes misappropriated the Grease Spot's trade secrets for their own economic gain.

36. Baker acquired the Grease Spot's trade secrets and knew or should have known that the trade secrets were acquired by improper means. Baker misappropriated the Grease Spot's trade secrets for its own economic gain.

37. As a result of the misappropriation of the Grease Spot's trade secrets by Richard Harnes, Sherry Harnes and Baker, the Grease Spot has suffered damages anticipated to be in an amount exceeding Ten Thousand Dollars (\$10,000.00), the exact amount which will be proven at trial.

COUNT V:
THIRD PARTY INTERFERENCE WITH CONTRACT

38. Plaintiff realleges the allegations contained in Paragraphs 1-37 herein.

39. There has been in existence between the Grease Spot and Richard and Sherry Harnes an Agreement to Purchase since September 2000.

40. Baker knew that Richard Harnes was a prior owner of the Grease Spot and had sold his interest in the Grease Spot. Baker also knew that Richard Harnes entered into a non-compete agreement with the Grease Spot when he sold his interest, which non-compete agreement was for the duration of five (5) years. Baker also knew that Richard Harnes supplied Baker with proprietary information Richard Harnes acquired at the Grease Spot.

41. Baker intentionally interfered with the Agreement to Purchase between Richard and Sherry Harnes and the Grease Spot, causing Richard and Sherry Harnes to breach the Agreement.

42. As a result of the intentional interference with the Agreement between the Grease Spot and Richard and Sherry Harnes, the Grease Spot has suffered damages anticipated to be in an amount exceeding Ten Thousand Dollars (\$10,000.00), the exact amount which will be proven at trial.

COUNT VI:
INJUNCTIVE RELIEF

43. Plaintiff realleges the allegations contained in Paragraphs 1-42 herein.

44. Richard and Sherry Harnes were in possession of trade secrets that belonged to the Grease Spot.

45. Richard and Sherry Harnes misappropriated the Grease Spot's trade secrets for their own economic gain.

46. Baker acquired the Grease Spot's trade secrets and knew or should have known that the trade secrets were acquired by improper means. Baker misappropriated the Grease Spot's trade secrets for its own economic gain.

COMPLAINT AND DEMAND FOR JURY TRIAL-6

47. As a result of the misappropriation of the Grease Spot's trade secrets by Richard Harnes, Sherry Harnes and Baker, the Grease Spot has suffered damages. Richard Harnes, Sherry Harnes and Baker should be enjoined under I.C. § 48-802 from misappropriating the Grease Spot's trade secrets.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Idaho Rules of Civil Procedure, the plaintiff herein demands a trial by a jury of no less than twelve (12) persons in the above-entitled case.

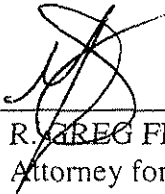
WHEREFORE, plaintiff requests that this court grant the following relief:

1. A judgment for damages in an amount to be determined at trial with prejudgment interest thereon;
2. For an award of attorney fees and costs, pursuant to Idaho Code §§ 12-120, 12-121;
3. For injunctive relief pursuant to I.C. § 48-802; and
4. For such other and further relief as the court deems just and proper.

DATED this 15th day of July, 2005.

PAINE, HAMBLIN, COFFIN,
BROOKE & MILLER LLP

By _____


R. GREG FERNEY
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO)
)
County of Kootenai)

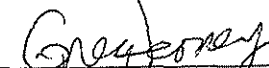
I, Scott Wessling, being first duly sworn, depose and state:

I am the president of plaintiff corporation named herein. I have read the foregoing Compliant and know that the facts and information contained therein are true to the best of my knowledge and belief.

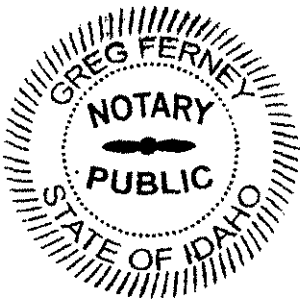


Scott Wessling

Subscribed and Sworn to before me this 1st day of July, 2005.



Notary Public for the State of Idaho
Residing at : CDA
My Commission Expires: 1/21/2010



QVO

AGREEMENT TO PURCHASE

This AGREEMENT is, between The Grease Spot, INC. (herein called Purchaser and/or Company), and Richard Harnes and Sherry Harnes, husband and wife, (herein called sellers).

Sellers desire to sell to Purchaser and the Purchaser desires to buy from the Sellers 500 shares of capital stock of the Company.

Sellers have delivered to Purchaser

500 shares of stock in exchange for the purchaser's promissory note attached hereto.

IT IS AGREED 1:

Article 1

Sellers' Representations and Warranties

Sellers, jointly and severally, represent, warrant and agree as follows:

- (a) Company is a corporation duly organized and validly existing in good standing under the laws of the State of Idaho and has the corporate power to own its property and carry on its business as now being conducted.
- (b) The authorized capital stock of the Company is, and 10,000 shares of common stock, no par value per share, of which 1005 shares are, and on such date were, issued and outstanding. All of the issued and outstanding shares of common stock of the Company are hereinafter referred to as the "Stock." There are not authorized or outstanding any options, warrants or other rights to acquire stock of the Company.
- (c) Each of the Sellers is the owner of record of the number of shares of the Stock stated opposite his name below:

<u>Name</u>	<u>Shares of Common stock</u>
Jerry Hayes	5
Scott Wessling	500
Sherry Harnes	500



Total

1005

- (d) The Sellers will at the Closing Date have good title to the shares of Stock to be sold pursuant to this Agreement, free and clear of all claims, liens and encumbrances; such shares are now and will be at the Closing Date validly issued and outstanding, fully paid and non-assessable; and the Sellers will have at the Closing Date full legal right, power and authority to sell, assign and transfer the Stock to the Purchaser.
- (e) The Balance Sheet and Statements of Profit and Loss and Surplus of the Company, previously described, are true and correct, have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods indicated and fairly present the financial condition of the Company and the results of its operations as at the dates or throughout the periods indicated. At Closing Date of, 2000, the Company had no liabilities, fixed or contingent, which are not fully shown or provided for on the Balance Sheet as at that date, except obligations to perform after, the purchaser has been aware since October 25, 1999, under open sales contracts, supply contracts, purchase orders and other commitments, incurred in the ordinary course of business.
- (f) The purchaser has been aware of any changes in the business, financial position or properties of the Company.
- (g) Since October 25, 1999, the Company has not:
- (i) Issued or sold any of its stock, bonds or other corporate securities, except 5 shares to Jerry Hayes;
 - (ii) Incurred any obligation or liability (fixed or contingent), except obligations and liabilities incurred in the ordinary course of business;
 - (iii) Discharged or satisfied any lien or encumbrance, or paid any obligation or liability (fixed or contingent) other than current liabilities included in the Balance Sheet, and current liabilities incurred since that date in the ordinary course of business;

- (i) Declared or made any payment or distribution to stockholders;
 - (ii) Purchased or redeemed any shares of its stock;
 - (iii) Made any general wage or salary increase;
 - (iv) Mortgaged, pledged or subjected to lien, or otherwise encumbered, any of its assets, tangible or intangible;
 - (v) Sold, assigned or transferred any of its tangible assets or cancelled any debts or claims, except in each case in the ordinary course of business;
 - (vi) Sold, assigned or transferred any patents, trademarks, trade names, copyrights, licenses or other intangible assets; or
 - (vii) Suffered any net operating loss or any extraordinary loss, or waived any rights of substantial value, or entered into any transactions not in the ordinary course of business.
- (h) Company has good and marketable title to the real property described in Exhibit A hereto (which includes all the real property reflected in the Balance Sheet and all of the real property used in the business of the Company) free and clear of all mortgages, liens and encumbrances, of every kind and character except encumbrances described in Exhibit A; no zoning ordinance prohibits, interferes with or impairs the usefulness of the property for the purposes for which it is now used; and all of the plants, structures and equipment upon such real property are in good operating condition and repair.
- (i) Except for changes in the ordinary course of business, the Company has good and marketable title to all its personal property and assets (which includes all the personal property and assets reflected in the Balance Sheet and all the personal property and assets used in the business of the Company except as specified in Exhibit A); and none of such property and assets is subject to encumbrances, liens and charges incidental to the conduct of the business of the Company which do not impair the use of such property in the normal conduct of the business of the Company. The entire inventory is presently useful and

salable in the ordinary course of the Company's business.

- (j) Except for the contracts, commitments and obligations described in Exhibit A hereto, the Company is not a party to any written or oral contract not made in the ordinary course of business, employment contract, contract with any labor union or association, bonus, pension, profit sharing, retirement, stock purchase, hospitalization, insurance or other plan providing employee benefits, lease with respect to any property, real, or personal, whether as lessor or lessee, continuing contract for the future purchase of materials, supplies or equipment in excess of the requirements of its business now booked or for normal operating inventories, contract or commitment for capital expenditures in excess of \$<amount> in the aggregate, or contract continuing over a period of more than one year from its date. Between the date hereof and the Closing Date, Sellers will not permit the Company without the written consent of the Purchaser: to make any changes or modifications in or surrender its rights under any instruments listed in Exhibit A hereto, or in any other existing contracts or leases; or to enter into any further material contracts or leases; or to make any further additions to its property under or in the ordinary course of business or except as essential to maintain its plants, properties and equipment.
- (k) All of the Company's contracts of a material nature are in full force and effect and no default exists in respect thereof on the part of the Company or the other parties thereto.
- (l) Except as set forth in the Balance Sheet or in the Notes thereto, the Company has no outstanding indebtedness, other than trade or business obligations subsequently incurred in the ordinary course of business, and the Company is not in default in respect of any terms or conditions of any indebtedness.
- (m) The Company has the patents, patent applications, registered trademarks and licenses, described in Exhibit A hereto. The Company has full right, title and ownership to its corporate name. Neither the Company nor the Sellers has received

- any notice of conflict with respect to the rights of others to the use of the Company's corporate name, or any such patents, applications, trademarks or licenses.
- (n) All notes and accounts receivable owned by the Company are good and collectible, subject to no counterclaim or setoffs in excess of reserves provided therefor in the Balance Sheet as adjusted in the ordinary course of business to date.
 - (o) The Company has no obligations, contingent or otherwise, under any employment contract, collective bargaining agreement with employees or under any executive employment agreement, executive compensation agreement, employees' pension or retirement plan, employees' insurance plan, employees' profit-sharing plan or employees' stock purchase plan, except as described in Exhibit A hereto, and the Company is not in default under any such agreement or plan so described.
 - (p) The Balance Sheet contains adequate provision for all Federal income, Federal excess profits, state income, franchise, real property, personal property and all other taxes of the Company, including interest and penalties in respect thereof, for the period ended August 31, 2000, and all fiscal periods prior thereto. For the fiscal year ending 2000, and fiscal years subsequent to the years after 2000, remain open for assessment of additional Federal income taxes, and all deficiencies of Federal income taxes through such fiscal years for 1999 have been settled.
 - (q) The Company is not subject to any charter, by-law, mortgage, lien, lease, agreement, instrument, order, judgment or decree, or any other restriction of any kind or character, which materially or adversely affects the business or condition of the Company or any of its assets or property, or which would prevent the execution of this Agreement or prevent or make unduly burdensome the consummation of any of the transactions provided for in this Agreement or the liquidation of the Company.
 - (r) The Company is not engaged in or threatened with any legal action or other proceedings nor has it

been charged with, or to its knowledge or the knowledge of the Sellers is it under investigation with respect to, any charge concerning any presently pending material violation of any provision of Federal, state or local law or administrative regulations in respect to its business (other than actions, suits or proceedings where liabilities of the Company are adequately covered by insurance). None of such legal actions, other proceedings or investigations will prevent the execution of this Agreement or the consummation of any of the transactions provided for in this Agreement or liquidation of the Company.

- (s) The Company has in full force and effect policies of insurance of the types and in the amounts set forth in Exhibit A hereto, will continue all of such insurance in full force and effect up to and including the Closing Date and is the sole owner of all such policies.
- (t) There has not been since August 31, 2000, and will not be prior to the Closing Date, a sale or other disposition of any of the assets or other properties of the Company (exclusive of sales of inventory in the ordinary course of business).
- (u) The patents, patent applications and licenses owned by the Company are adequate and sufficient to permit the Company to conduct its business as presently being conducted, and the Company has no knowledge of any claims or alleged claims of infringement with respect to such patents or any other rights.
- (v) The Company is not subject to the jurisdiction of any re-negotiation authorities.
- (w) No shortages exist in the inventories of raw materials owned by customers and stored upon the Company's premises for use in future orders of such customers.
- (x) Sellers will reimburse the Purchaser on demand for all damage resulting from any misrepresentation contained in this Agreement and for any breach of any of the provisions of this Agreement and will at their expense protect and defend the Purchaser and hold the Purchaser harmless from expense and damage arising out of any alleged or threatened misrepresentation of breach of any of the terms of this Agreement.

- (y) The representations, warranties and agreements of the Sellers contained in this Article 1 shall be true on and as of the Closing Date (hereafter defined) with the same effect as if made on and as of such date, and shall survive the closing hereunder.

Article 2

Purchase Price

- (a) Subject to the representations, warranties and agreements of Sellers and of Purchaser, and subject to the terms and conditions herein stated, Sellers agree to sell, assign and transfer to Purchaser and Purchaser agrees to purchase from Sellers at the offices of the Purchaser. The Stock for an aggregate purchase price of \$30,000 which Purchaser agrees to pay as set forth in the Promissory Note attached hereto.
- (b) The Sellers shall deliver to the Purchaser one certificate registered in the name of the Purchaser representing the Stock purchased.
- (c) All payments provided for hereunder shall be made as directed by the Sellers.

Article 3

Covenants pending Closing

Sellers further agree, jointly and severally:

- (a) To permit Purchaser and its authorized representatives to have, after the date of execution hereof, and cause the company to grant full access to the premises and to all the books and records of the Company during customary business hours and to cause the officers of the company to furnish Purchaser with such financial and operating data and other information with respect to the business and properties of the Company as Purchaser shall from time to time reasonable request.
- (b) To pay all Federal, state and local taxes which may be payable in respect of the sale of the Stock provided for hereunder.

- (c) To use their best efforts to persuade the employees of the Company to remain employees of the Company after the Closing Date.
- (d) To cause the Company, on or after the date of this Agreement and until the closing hereunder, to conduct its business in the ordinary course and to prevent it, without the written consent of Purchaser, from entering into any transaction which if effected before the date of this Agreement would constitute a breach of the representations, warranties or agreements contained herein.
- (e) To take at their own expense all steps which may be necessary to perform fully their agreements with Purchaser.

Article 4

Conditions Precedent to Purchaser's Obligations

The obligation of Purchaser to purchase the Stock to be conveyed hereunder is subject to the satisfaction on or prior to the Closing Date of the following conditions:

- (a) Sellers have furnished the Purchaser with the following:
 - (i) The Company is a corporation duly organized and validly existing in good standing under the laws of the State of Idaho and has the corporate power to carry on its business as now being conducted;
 - (ii) The authorized, issued and outstanding capital stock of the Company is as set forth in Article 1(b);
 - (iii) The shares of Stock are validly issued and outstanding, fully paid and non-assessable;
 - (iv) Each of Sellers has full legal right, power and authority to sell, assign and transfer the shares of Stock to Purchaser and good title to all of the shares of stock has been duly transferred to Purchaser;
 - (v) The Company has good and marketable title to all the real property described in Exhibit A hereto subject only to the encumbrances described in Exhibit A;

- (vi) This Agreement has been duly executed and delivered by Sellers and is a valid, legal and binding obligation of Sellers in accordance with its terms; and

As to such other matters incident of the transaction herein contemplated as Purchaser and its counsel may upon due notice reasonable request.

- (b) Buyer is satisfied with respect to all legal aspects of the transaction contemplated by this Agreement.
- (c) No action or proceeding shall have been instituted or threatened before a court or other governmental body, or by any public authority, to restrain or prohibit the consummation of the transactions contemplated herein.
- (d) The representations and warranties contained in this Agreement shall be true on and as of the Closing Date with the same effect as though they had been made on and as of such date and the delivery to Purchaser of a certificate for the Stock shall constitute an affirmation by each Seller that the agreements of Sellers to be performed on or before the Closing Date pursuant to the terms hereof shall have been duly performed.

Article 5

Miscellaneous

- (a) If, on or before the Closing Date, the plant of the Company shall suffer a loss by fire, flood, tornado, riot, accident or other calamity, whether or not insured, to such an extent that in the opinion of Purchaser there will be such a delay in repairing or rebuilding such plant as to materially affect the future operations of the company, then Purchaser may, at its election, terminate this Agreement without cost, expense or liability to either party.
- (b) Sellers hereby represent that they have not retained any broker or paid or agreed to pay any brokerage fee or commission to any broker or agent or on account of this Agreement. Purchaser agrees hereby to pay any brokerage fee or

commission on account of this Agreement attributable to its act.

- (c) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- (d) This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.
- (e) Any controversy or claims arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered may be entered in the highest court of the forum, State or Federal, having jurisdiction.
- * (f) For a period of five years from and after the date of this Agreement, non of the Sellers will in any manner, directly or indirectly (a) own, manage, operate, control or participate to a substantial extent in the ownership, management or control of or be connected in any substantial manner with, any firm or organization which is a competitor of the Company in respect of its present lines of business, or of any successor of the Company, or (b) lend his name to any firm or organization whose business is similar to that of the Company or any successor of the Company.
- (g) Purchaser represents that it is purchasing the Stock for its own account for investment and not with a view to the distribution or sale thereof.
- (h) Any notice or other communication require or permitted hereunder shall be sufficiently govern if sent by registered mail, postage prepaid, addressed to Sellers and to Purchaser and shall be deemed to have been given as of the date so mailed.
- (i) To facilitate the delivery of the Stock at the Closing Date, Sellers have caused certificates representing 500 shares of capital stock of the Company to be deposited in negotiable form executed stock power, signature guaranteed and provision made for appropriate stock transfer.
- (j) Sellers, jointly and severally, consent and agree that if Purchaser desires at any time to bring legal action based upon any matter arising out of this Agreement, such action may be commenced in

Idaho against any one or more of the Sellers on whom process can conveniently be served. In such event, the other Sellers will, after written demand personally delivered together with a copy of the complaint, voluntarily appear in such action within 120 days, and if any of such Sellers fail to so appear, such of said Sellers as do not so appear shall be bound by the result of such action as fully as if all of the sellers had appeared in and contested the action.

In Witness whereof, each of the Sellers has signed this Agreement and Purchaser has caused its corporate name to be hereunto subscribed and its corporate seal to be hereunto affixed by its duly authorized officers.

DATED: 9/15/00

SIGNED: Sherry Harnes
Sherry Harnes
Sellers

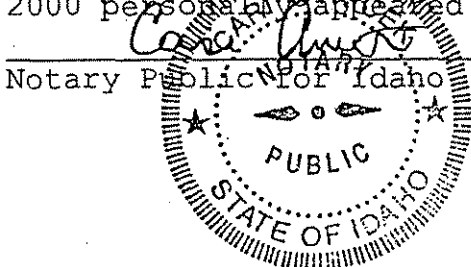
DATED: 9/15/00

SIGNED: Richard Harnes
Richard Harnes
Sellers

DATED: 9/15/00

SIGNED: Scott Wessling
Scott Wessling
President of The Grease Spot, Inc.

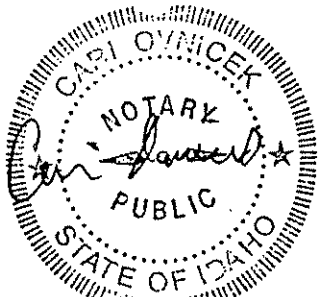
SUBSCRIBED AND SWORN TO before me on 9/15/00,
2000 personally appeared Sherry Harnes.



Residing in Post Falls, ID
My commission expires on 6/27/05

SUBSCRIBED AND SWORN TO before me on 9/15/00,
2000 personally appeared Richard Harnes.

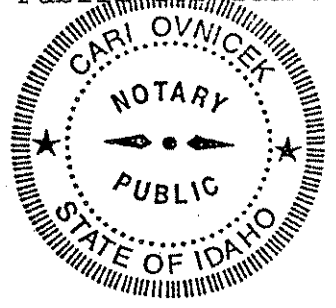
Notary Public for Idaho



Residing in Post Falls, ID
My commission expires on 6/21/05

SUBSCRIBED AND SWORN TO before me on 9/15/00,
2000 personally appeared Scott Wessling known to me to be the
President of The Grease Spot, Inc.
Cari Ovnicek

Notary Public for Idaho



Residing in Post Falls, ID
My commission expires on 6/21/05

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2005 AUG -8 PM 3: 05

CLERK DISTRICT COURT
[Signature]
DEPUTY

1
2 Joel P. Hazel, ISB No. 4980
3 WITHERSPOON, KELLEY,
4 DAVENPORT & TOOLE, P.S.
5 The Spokesman Review Building
608 Northwest Blvd., Suite 401
6 Coeur d'Alene, Idaho 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

7 Attorneys for Defendant, Baker Commodities, Inc.

8 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

10 THE GREASE SPOT, INC.,
11 Plaintiff,
12 vs.
13 RICHARD and SHERRY HARNES, husband
14 and wife, and BAKER COMMODITIES, INC.,
15 a Delaware Corporation, and JOHN DOES 1-
16 10,
Defendants.

Case No. CV-05-5010
BAKER COMMODITIES, INC.'S ANSWER
AND AFFIRMATIVE DEFENSES

17 COMES NOW Defendant, BAKER COMMODITIES, INC., (hereafter "Baker"), by and through
18 its attorney, Joel P. Hazel, and hereby submits the following answer and affirmative defenses to
19 Plaintiff's Complaint.

20 Baker denies each and every claim and allegation unless expressly and specifically admitted
21 herein.

22 ANSWER TO PARTIES

- 23 1. In answer to paragraph 1, Baker is without knowledge or information sufficient to form
24 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).
25 2. In answer to paragraph 2, Baker is without knowledge or information sufficient to form
26 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).
27 3. In answer to paragraph 3, Baker is without knowledge or information sufficient to form
28 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

1 4. In answer to paragraph 4, Baker admits the allegations

2 **ANSWER TO JURISDICTION AND VENUE**

3 5. In answer to paragraph 5, Baker cannot admit the allegations contained therein in that an
4 answer to the allegations relates to the truth of conclusions of law. To the extent any response is required,
5 Baker denies the same.

6 6. In answer to paragraph 6, Baker cannot admit the allegations contained therein in that an
7 answer to the allegations relates to the truth of conclusions of law. To the extent any response is required,
8 Baker denies the same.

9 7. In answer to paragraph 7, Baker cannot admit the allegations contained therein in that an
10 answer to the allegations relates to the truth of conclusions of law. To the extent any response is required,
11 Baker denies the same.

12 **ANSWER TO FACTS**

13 8. In answer to paragraph 8, Baker is without knowledge or information sufficient to form
14 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

15 9. In answer to paragraph 9, Baker is without knowledge or information sufficient to form
16 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).
17 Baker also affirmatively alleges that the Agreement to Purchase speaks for itself and is dated September
18 15, 2000.

19 10. In answer to paragraph 10, Baker is without knowledge or information sufficient to form
20 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).
21 Baker also affirmatively alleges that the Agreement to Purchase speaks for itself and denies any allegation
22 inconsistent with said Agreement.

23 11. In answer to paragraph 11, Baker is without knowledge or information sufficient to form
24 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

25 12. In answer to paragraph 12, Baker is without knowledge or information sufficient to form
26 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

27 13. In answer to paragraph 13, Baker is without knowledge or information sufficient to form
28 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

1 14. In answer to paragraph 14, Baker is without knowledge or information sufficient to form
2 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).
3 Baker affirmatively alleges that Plaintiff's customer lists, source of supplies, costs, price data and figures
4 do not constitute trade secrets under Idaho law.

5 15. In answer to paragraph 15, Baker admits it entered into a business relationship with
6 Richard Harnes in February of 2005. Baker denies the remainder of the allegations contained in
7 paragraph 15.

8 16. In answer to paragraph 16, Baker admits that its Spokane General Manager, John
9 McCartney and Richard Harnes took a business trip to Montana in March of 2005. Baker denies the
10 remaining allegations contained in paragraph 16.

11 17. In answer to paragraph 17, Baker admits that its Spokane Plant Manager, Marty Eckstein
12 and Richard Harnes took a business trip to Montana in March of 2005. Baker denies the remaining
13 allegations contained in paragraph 17.

14 18. In answer to paragraph 18, Baker is without knowledge or information sufficient to form
15 a belief as to the truth of Plaintiff's allegations that Plaintiff lost its customers and clients in Montana and
16 therefore, denies the same pursuant to I.R.C.P. 8(b). Baker denies the remainder of the allegations
17 contained in paragraph 18

18 19. In answer to paragraph 19, Baker admits it contacted the Burger King chain of restaurants
19 to enter into a contract with Baker. Baker denies the remainder of the allegations in paragraph 19.

20 20. In answer to paragraph 20, Baker is without knowledge or information sufficient to form
21 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

22 21. In answer to paragraph 21, Baker is without knowledge or information sufficient to form
23 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

24 **ANSWER TO COUNT I: BREACH OF CONTRACT**

25 22. In answer to paragraph 22, Baker restates and incorporates each of the its previous
26 responses to those allegations.

27 23. In answer to paragraph 23, Baker is without knowledge or information sufficient to form
28 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

1 24. In answer to paragraph 24, Baker is without knowledge or information sufficient to form
2 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

3 **ANSWER TO COUNT II: BREACH OF THE COVENANT OF**
4 **GOOD FAITH AND FAIR DEALING**

5 25. In answer to paragraph 25, Baker restates and incorporates each of the its previous
6 responses to those allegations.

7 26. In answer to paragraph 26, Baker is without knowledge or information sufficient to form
8 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

9 27. In answer to paragraph 27, Baker is without knowledge or information sufficient to form
10 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

11 28. In answer to paragraph 28, Baker is without knowledge or information sufficient to form
12 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

13 **ANSWER TO COUNT III: UNJUST ENRICHMENT**

14 29. In answer to paragraph 29, Baker restates and incorporates each of the its previous
15 responses to those allegations.

16 30. In answer to paragraph 30, Baker denies the allegations.

17 31. In answer to paragraph 31, Baker denies the allegations.

18 32. In answer to paragraph 32, Baker denies the allegations.

19 **ANSWER TO COUNT IV: VIOLATION OF TRADE SECRETS ACT**

20 33. In answer to paragraph 33, Baker restates and incorporates each of the its previous
21 responses to those allegations.

22 34. In answer to paragraph 34, Baker is without knowledge or information sufficient to form
23 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

24 35. In answer to paragraph 35, Baker denies the allegations.

25 36. In answer to paragraph 36, Baker denies the allegations.

26 37. In answer to paragraph 37, Baker denies the allegations.

27 **ANSWER TO COUNT V: THIRD PARTY INTERFERENCE WITH CONTRACT**

28 38. In answer to paragraph 38, Baker restates and incorporates each of the its previous

1 responses to those allegations.

2 39. In answer to paragraph 39, Baker is without knowledge or information sufficient to form
3 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

4 40. In answer to paragraph 40, Baker admits it knew that Richard Harnes was a prior
5 shareholder of the Plaintiff. Baker denies the remainder of the allegations contained in paragraph 40.

6 41. In answer to paragraph 41, Baker denies the allegations.

7 42. In answer to paragraph 42, Baker denies the allegations.

8 **ANSWER TO COUNT VI: INJUNCTIVE RELIEF**

9 43. In answer to paragraph 43, Baker restates and incorporates each of the its previous
10 responses to those allegations.

11 44. In answer to paragraph 44, Baker is without knowledge or information sufficient to form
12 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

13 45. In answer to paragraph 45, Baker is without knowledge or information sufficient to form
14 a belief as to the truth of Plaintiff's allegations, and therefore, denies the same pursuant to I.R.C.P. 8(b).

15 46. In answer to paragraph 46, Baker denies the allegations.

16 47. In answer to paragraph 47, Baker denies the allegations.

17 Baker further denies that Plaintiff is entitled to any relief against Baker.

18 In further answer to Plaintiff's Complaint, and by way of affirmative defenses, Baker alleges as
19 follows:

20 1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be
21 granted.

22 2. Plaintiff's damages were caused, in whole or in part, by its own actions or by persons
23 over whom Baker had no control.

24 3. Baker did not know that Defendants Richard and Sherry Harnes had a covenant not to
25 compete with Plaintiff.

26 4. The information Plaintiff claims Baker misappropriated or used is not a trade secret
27 under Idaho law.

28 5. Portions of the Agreement to Purchase attached to Plaintiff's Complaint as Exhibit "A"

1 are unenforceable including the covenant not to compete.

2 6. Portions of the Agreement to Purchase are void as against Public Policy.

3 7. Portions of the Agreement to Purchase attached to Plaintiff's Complaint as Exhibit "A",
4 are unenforceable because of a failure or lack of consideration.

5 8. Plaintiff should be denied relief because it is guilty of unclean hands.

6 9. Plaintiff should be denied relief because of waiver/estoppel.

7 10. Baker reserves the right to assert additional affirmative defenses as discovery progresses.

8
9 WHEREFORE, Baker prays for relief as follows:

10 1. That a permanent injunction enjoining Plaintiff and its agents and employees from
11 entering or coming upon the land of Defendant be entered.

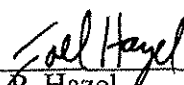
12 2. That Plaintiff's Complaint be denied in full;

13 3. That Defendant have judgment for attorneys' fees and costs as allowed by statute, contract
14 or equity; and

15 4. For such other and further relief as the Court deems just and equitable under the
16 circumstances.

17
18 DATED this 8 day of August, 2005.

19 WITHERSPOON, KELLEY, DAVENPORT
20 & TOOLE, P.S.

21
22 
23 _____
24 Joel P. Hazel
25 WITHERSPOON, KELLEY,
26 DAVENPORT & TOOLE, P.S.
27 Suite 401, The Spokesman Review Building
28 608 Northwest Boulevard
Coeur d'Alene, Idaho 83814-2146

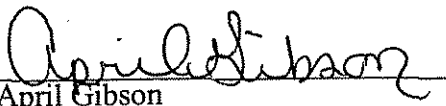
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CERTIFICATE OF SERVICE

I certify that on this the 8 day of August, 2005, I caused a true and correct copy of the BAKER COMMODITIES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

R. Greg Ferney
Paine, Hamblen, Coffin,
Brooke & Miller, LLP
701 Front Avenue, Ste. 101
P.O. Box E
Coeur d'Alene, Idaho 83816-6338

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile: (208) 664-6338


April Gibson

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 3-20-06
AT 4:27 O'CLOCK P M
CLERK, DISTRICT COURT
Debra J. Ongles
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,	)	CASE NO. CV-05-5010
)	
Plaintiff,	)	ORDER COMPELLING
	)	ARBITRATION AND
vs.	)	STAYING LITIGATION
)	
)	
RICHARD and SHERRY HARNES,)	
Husband and wife, and BAKER)	
COMMODITIES, INC., a Delaware)	
Corporation, and JOHN DOES 1-10,)	
)	
Defendants.)	

Defendants Harnes has moved to dismiss the Complaint filed by The Grease Spot, Inc. on the grounds that there is a valid arbitration agreement between the parties. Harnes has moved in the alternative to stay the litigation pending arbitration of the dispute between The Grease Spot, Inc. and Harnes.

The Grease Spot, Inc. does not dispute the existence of a valid enforceable mandatory arbitration agreement. However, the Grease Spot, Inc. argues that Harnes has waived his right to arbitration. The Grease Spot Inc. further argues that, where there are multiple parties and

ORDER COMPELLING ARBITRATION
AND STAYING LITIGATION: 1
Boundary CV05-5010

multiple claims, compelling arbitration is within the discretion of the Court. The Grease Spot, Inc. argues that the presence of a co-defendant, Baker Commodities, and the multiplicity of claims, make arbitration in this case against public policy, and that the Motion to Compel Arbitration should be denied.

WAIVER

The sole grounds for waiver is that Harnes did not file an answer as promptly as he could have filed. Certainly, delay can constitute grounds for waiver, but the Motion to Dismiss was filed a little more than four months after the Complaint was filed. As of that date, the record does not reflect a great deal of judicial activity. Without more, a three to four month delay in filing a motion seeking to compel arbitration is not a waiver of arbitration.

MULTIPLE CLAIMS AND PARTIES

Harnes argues that the existence of the arbitration agreement necessarily ends any judicial analysis, and that arbitration must be compelled as a matter of law without exception. While there is certainly a strong policy favoring arbitration, Harnes may overstate the sacred nature of arbitration. The Grease Spot, Inc. points out case law where courts have refused to compel arbitration, given the presence of multiple claims and multiple parties in certain fact situations. It is possible to imagine factual scenarios where parties to an arbitration agreement may be trying to use their agreement to deprive other parties of access to the courts. Similarly, one party to an arbitration agreement could attempt to use that agreement to prevent the other party from accessing the courts on unrelated matters. But, assuming this Court has the discretion to deny a motion to compel arbitration, this Court concludes this would not be the appropriate

case to do so.

The Grease Spot, Inc. points out compelling arbitration will lead to duplication of legal proceedings and potential conflicting results. Harnes may face the same problem. After arbitration, Baker could third party Harnes. Neither The Grease Spot, Inc. nor Harnes may be benefited by the arbitration. Although The Grease Spot and Harnes both may well rue the day they signed up for the "efficiency and economy" of arbitration, that is what they both agreed to. It is speculative for this Court to conclude that The Grease Spot, Inc. will be more inconvenienced than would be Harnes by being held to their contractual agreement.

Before an overall resolution of all claims between all parties can be achieved, the arbitration needs to be held and concluded. All parties can then assess just what the arbitration proceeding produced, and then proceed accordingly in the context of this litigation to an overall resolution of their various differences. Regardless of the potential unreality of the judicial policy of favoring arbitration in the name of efficiency and economy, the parties to the arbitration agreement need to proceed with and get the arbitration proceeding out of the way, before this case can be fairly litigated between all the parties and resolved by the Court.

ORDER

The Grease Spot, Inc. and the Harnes are ordered to proceed with arbitration. This litigation is stayed as to all parties, pending completion of the arbitration.

DATED this 20 day of March, 2006.



CHARLES W. HOSACK
DISTRICT JUDGE

CLERK'S CERTIFICATE OF MAILING/DELIVERY

I hereby certify that on this 20 day of March, 2006, a true and correct copy of the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, interoffice mail, hand-delivered, or faxed to:

3-20-06 @ 4:27 pm *JE*

Michael B. Hague
Paine Hamblen
Fax: 208-664-6338

Joel Hazel
Witherspoon Kelley
Fax: 208-667-8470

Michael Ramsden
Ramsden & Lyons
Fax: 208-664-5884

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

By

Barbara Douglas
Deputy Clerk

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2007 JUL 12 PM 3: 38 *me*

MICHAEL B. HAGUE
PAINE HAMBLLEN LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d' Alene, ID 83816-2530
Telephone: (208) 664-8115
Facsimile: (208) 664-6338
ISBA# 3574

CLERK, DISTRICT COURT
Katharine
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff,

vs.

RICHARD and SHERRY HARNES,
husband and wife,

Defendants.

) Case No. CV 05-5010
)
) **PLAINTIFF'S OBJECTION TO**
) **DEFENDANTS' MOTION TO**
) **CHANGE AWARD**
)
)
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)
)

PLAINTIFF, The Grease Spot, Inc., objects to Defendants' Motion to Change Award. The time for Defendants to have voiced their present position on the subject of the Arbitrator's fees was shortly after the letter of October 25, 2006. The arbitration clause of the parties' contract did not provide for assessment of arbitrator's fees against one party, and none of the authorities cited by Defendants provide for the relief now sought by Defendants. This is a "lie in the weeds" maneuver

of the basest sort. Perhaps the parties might have agreed to all or nothing stakes had Defendants advocated for the merits of such when the Arbitrator raised the subject in October of 2006, but since Defendants lacked that courage then, it is apparent that Defendants, at least, agreed before the fact that the parties should split the Arbitrator's fees regardless of how the decision went. Defendants' motion should be denied.

DATED this 12th day of July, 2007.

PAINE HAMBLEN LLP

By 

MICHAEL B. HAGUE
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of July, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael E. Ramsden
Ramsden & Lyons
618 North 4th Street
P.O. Box 1336
Coeur d'Alene, ID 83816-1336

- U.S. MAIL
 HAND DELIVERED
 TELECOPY (FAX) to: (208) 664-5884

Joel P. Hazel
Witherspoon, Kelley, Davenport & Toole, P.S.
608 Northwest Blvd., Suite 401
Coeur d'Alene, ID 83814-2146,

- U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (208) 667-8470



Michael B. Hague

MICHAEL E. RAMSDEN, ISB #2368
RAMSDEN & LYONS, LLP
618 North 4th Street
P.O. Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: (208) 664-5818
Facsimile: (208) 664-5884

Attorneys for Defendants Harnes

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2007 JUL 17 PM 1:55

CLERK DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff,

vs.

RICHARD and SHERRY HARNES,
husband and wife, and BAKER
COMMODITIES, INC., a Delaware
Corporation, and JOHN DOES 1-10,

Defendants.

Case No. CV-05-5010

**DEFENDANTS HARNES' MOTION
TO CONFIRM ARBITRATION
AWARD AND FOR ENTRY OF
JUDGMENT**

COME NOW defendants Richard and Sherry Harnes pursuant to Idaho Code 7-911 and I.R.C.P. 58(a) and move this court for confirmation of the arbitration award and entry of judgment in this matter. A true copy of the arbitration award is attached to this motion. A proposed form of judgment is served with this motion.

DATED this 16th day of July, 2007.

RAMSDEN & LYONS, LLP

By Jennifer Y. Lyons
Michael E. Ramsden, Of the Firm
Attorneys for Defendants Harnes

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of July, 2007, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael B. Hague
Paine, Hamblen, Coffin, Brooke & Miller, LLP
PO Box E
Coeur d'Alene, ID 83816

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile (208) 664-6338

Joel P. Hazel
Witherspoon Kelly Davenport & Toole, PS
608 Northwest Blvd., Ste. 401
Coeur d'Alene, ID 83814-2146

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile (208) 667-8470

Jennifer Y. Lyons
Michael E. Ramsden

IN THE MATTER OF THE ARBITRATION OF

The Grease Spot, Inc.)	
Claimant,)	
)	
-vs-	)	DECISION
)	
Richard and Sherry Harnes,)	
Respondents.)	
_____)	

DISCUSSION

COVENANT NOT TO COMPETE

On September 15, 2000, Sherry Harnes (Sherry) sold her shares of stock in The Grease Spot, Inc. (Grease Spot) to Scott Wessling (Wessling). The Grease Spot, Inc., deals in the processing of restaurant grease (yellow grease), a product used as a food additive for livestock and bio-diesel. Richard Harnes (Richard), though not the titled owner of the stock, also signed the Agreement to Purchase (Agreement). The Agreement contained a non-compete provision, which read:

(f) For a period of five years from and after the date of this Agreement, non[e] of the Sellers will in any manner, directly or indirectly (a) own, manage, operate, control or participate to a substantial extent in the ownership, management or control of or

be connected in any substantial manner with, any firm or organization which is a competitor of the Company in respect of its present lines of business, or of any successor of the Company, or (b) lend his name to any firm or organization whose business is similar to that of the Company or any successor of the Company.

Prior to the sale, Richard had developed a business and social relationship with several Hutterite communities in the State of Montana. Starting in 2005, Richard did consulting work for Baker Commodities, Inc. (Baker). Initially, it appears that Richard was hired as a consultant to design and help build a grease plant in Billings, Montana. Also, in early 2005, Richard aided John McCartney and Marty Eckstein of Baker in making contact with the Hutterite Communities and securing their business. Grease Spot contends that Richard's actions violated the non-compete clause above and violated the Idaho Trade Secrets Act, Idaho Code 48-803, *et. seq.*

ISSUE: Is the non-compete clause enforceable?

The relationship of Richard to the Agreement is confusing. The Agreement lists him as one of the sellers; however, he had nothing to sell. The 500 shares of stock that were sold pursuant to the Agreement were owned by Sherry. Also on September 15, 2000, The Grease Spot entered a rental agreement with Sherry and Richard and signed a promissory note in their favor. By the sale, Wessling (the President of The Grease Spot, Inc.) became the owner of 1,000 of the 1,005 shares of The Grease Spot, Inc.

After the sale of his wife's stock, Richard continued to have a relationship with The Grease Spot, Inc. as an independent contractor. In fact, his relationship continued until the falling-out on January 31, 2005, between Richard and Wessling, which was the topic of a considerable amount of testimony. In order for the non-competition provision to be enforceable, it must be reasonable in duration and geographic scope. *Shakey's Inc. v. Martin*, 91 Idaho 758, 764, 430 P.2d 504, 510 (1967).

Under the facts of this case, the duration of the non-compete, *i.e.*, five years, is certainly reasonable. The problem with the non-compete is with the geographic scope. We start with the fact that the non-compete contains *no* geographic limitation. This failure may be overcome if the class of persons with whom contact is prohibited is readily identifiable. In the present case, there is no specific class of persons, *i.e.*, customers with whom contact is prohibited. The non-compete in this case seeks to restrict any association with "any firm or organization which is a competitor of the Company in respect of its present lines of business." There is no limitation on the restriction of clients or the activities prohibited by the clause. Assuming that Baker Commodities, Inc., comes within the definition of a "competitor of the Company" Richard, assuming the clause can be enforced against him, would have violated the non-compete by being "connected in any substantial

manner” with Baker Commodities, Inc., regardless of what he did with Baker, including activities other than the sale of grease, e.g., “assisting in the design of a grease plant” Exhibit 115, p. 5, or sale of beef tallow, Exhibit 115, p. 7. Nor would it matter, as Richard testified, that The Grease Spot, Inc. was no longer delivering yellow grease to Montana. This illustrates the unreasonableness of the non-competitive clause. A “non-competition provision must be no more restrictive than necessary to protect the interest or interests at issue.” *Intermountain Eye and Laser Centers, P.L.L.C. v. Miller*, 142 Idaho 218, 227, 127 P.3d 121, 130 (2005).

This is not an appropriate case for the Arbitrator to re-write or “blue-pencil” the non-competition clause. “While the court may blue-pencil, if it can be done simply and accurately, the court will not do a substantial rewrite of the contract.” *Id. at*, 142 Idaho 228, 127 P.3d 131.

In *Insurance Center, Inc. v. Taylor*, 94 Idaho 896, 499 P.2d 1252 (1972), cited by the claimant, the Idaho Supreme Court reversed a trial court that had modified a restrictive covenant:

Even though this Court accepts the principal [sic] that a trial court may in a proper case modify a restrictive covenant, nevertheless the covenant in question here was so lacking in the essential terms which would protect the employee, namely a limitation on time, area, and scope of activity, that the covenant is as a matter of law unenforceable. The trial court did not modify the covenant-it had

to supply the essential restrictions to make it reasonable. 94 Idaho 899, 499 P.2d 1255. *See, also, Freiburger v. J-U-B Engineers, Inc.*, 141 Idaho 415, 422-3, 111 P.3d 100, 107-8 (2005).

There is no authority for Claimant's argument to the effect that it is clear in *this* case that Richard's conduct violated the Agreement. The non-competition clause itself must be legally enforceable.

The non-competition provision of the Agreement is vague and overly broad, and is, therefore, unenforceable. If the non-compete were enforceable against anyone, there would remain a problem of enforcing it against Richard as he was selling nothing under the Agreement.

TRADE SECRETS

The Grease Spot alleges that "Richard and Sherry Harnes misappropriated the Grease Spot's trade secrets for their own economic gain." Complaint, p. 5.

The Idaho Trade Secrets Act (ITSA) is found at Idaho Code 48-801, *et. seq.*, and the leading Idaho case is *Basic American, Inc. v. Shatila*, 133 Idaho 726, 992 P.2d 175 (1999).

Does a trade secret under the ITSA exist in this case? Along with this issue, should be considered the issue of was there a sufficiently specific trade secret?

Under the ITSA,

'trade secret' means information, including a formula, pattern, compilation, program, computer program, device, method, technique, or process, that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;

and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.... Idaho Code 48-801(5).

The Plaintiff alleges that its trade secrets were "Grease Spot's customer list, source of supplies, confidential costs, price data and figures."

Complaint and demand for jury trial, p. 3.

No actual customer list has been produced in this dispute. There was not sufficient proof that the Grease Spot's source of supplies, costs, price date and figures were confidential or that the Grease Spot tried to keep this information secret. It appears that the trade secrets that Grease Spot is actually alleging consists of Richard's knowledge of the existence of Hutterite communities, individuals in those communities with authority to purchase yellow grease, location of the communities, other information about the communities, and cost and pricing limitations of Grease Spot. He also knew of "marketing techniques" that had proven successful with the Hutterite colonies, *i.e.*, buy whiskey for the men and hand lotion for the women. The evidence indicates that Richard obtained, at least some portion of this knowledge starting in 1994 when Wessling had no ownership in The

Grease Spot, Inc., and before Grease Spot was re-purchased from Wilbur-Ellis in 1999 by Richard/and/or Sherrie and Wessling. Shortly thereafter, The Grease Spot, Inc., was incorporated, and at the time of the sale of stock, Sherrie owned 500 shares of the corporation.

The evidence is that the phone numbers of Hutterite colonies are published. Exhibit 205; 112. Contact by any seller can be made by a phone call. Directions to the colonies could be gained by a phone call and questions can be asked of whom to talk to about the sale of yellow grease. The evidence that Richard went through the process of developing these customers does not create a trade secret. In fact, there is nothing at all secret that has been shown about the Hutterite colonies. The knowledge possessed by Richard is "readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use."

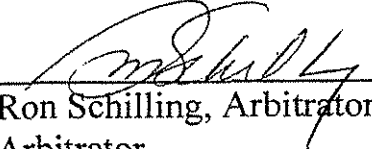
A trade secret must be "the subject of efforts that are reasonable under the circumstances to maintain its secrecy." The only evidence of efforts to maintain secrecy, argued by Grease Spot, is the non-compete clause itself. However, the non-compete clause did not seek to maintain a trade secret. By its very terms, it would expire in five years. The non-compete clause could be argued to prevent competition from Richard. It must be analyzed

under the law dealing with such non-competition clauses, which, was done above. In this case, there were no trade secrets to misappropriate.

DECISION

IT IS HEREBY ORDERED that Claimant, The Grease Spot, Inc. have no recovery against Respondents, Richard and Sherry Harnes.

Dated this 25th day of June, 2007.



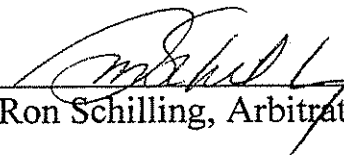
Ron Schilling, Arbitrator
Arbitrator

CERTIFICATE OF SERVICE

I do hereby certify that a true, full, and correct copy of the DECISION was served upon each party named below on the 25th day of June, 2007, by Facsimile and by U.S. Mail postage prepaid.

Michael B. Hague
Paine, Hamblen, Coffin,
Brooke & Miller, LLP
701 Front Avenue, Suite 101
P.O. Box E
Coeur d'Alene, Idaho 83816-0328

Michael E. Ramsden
Ramsden & Lyons
P.O. Box 1336
Coeur d'Alene, Idaho 83816-1336



Ron Schilling, Arbitrator

MICHAEL E. RAMSDEN, ISB #2368
RAMSDEN & LYONS, LLP
618 North 4th Street
P.O. Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: (208) 664-5818
Facsimile: (208) 664-5884

Attorneys for Defendants Harnes

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2007 OCT -1 AM 9:19

CLERK DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff,

vs.

RICHARD and SHERRY HARNES,
husband and wife, and BAKER
COMMODITIES, INC., a Delaware
Corporation, and JOHN DOES 1-10,

Defendants.

Case No. CV-05-5010

ORDER GRANTING DEFENDANTS
HARNES' MOTION TO CONFIRM
ARBITRATION AWARD AND FOR
ENTRY OF JUDGMENT

The motion of defendants Richard and Sherry Harnes pursuant to Idaho Code 7-911 and I.R.C.P. 58(a) for confirmation of the arbitration award and entry of judgment in this matter came before the Court for hearing on August 31, 2007.

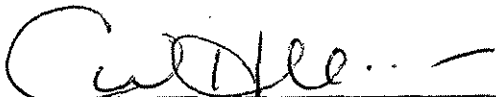
The court having reviewed the submissions of the parties, heard the arguments of counsel and being fully advised in the premises,

IT IS ORDERED,

That the motion to confirm the arbitration award is granted and the arbitration award is confirmed.

That judgment be entered on the arbitration award.

DATED this 27 day of Sept, 2007.



Charles W. Hosack, District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 01 day of Oct., 2007, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael B. Hague
Paine, Hamblen, Coffin, Brooke & Miller, LLP
PO Box E
Coeur d'Alene, ID 83816

___ US Mail
___ Overnight Mail
___ Hand Delivered
 Facsimile (208) 664-6338 9¹⁹

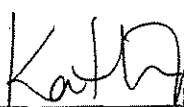
Joel P. Hazel
Witherspoon Kelly Davenport & Toole, PS
608 Northwest Blvd., Ste. 401
Coeur d'Alene, ID 83814-2146

___ US Mail
___ Overnight Mail
___ Hand Delivered
 Facsimile (208) 667-8470 9¹⁹

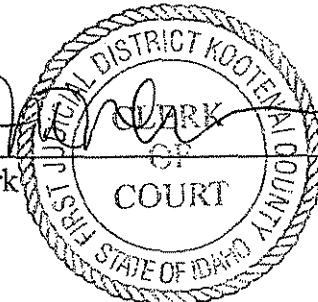
Michael E. Ramsden
Ramsden & Lyons, LLP
P. O. Box 1336
Coeur d'Alene, ID 83816-1336

___ US Mail
___ Overnight Mail
___ Hand Delivered
 Facsimile (208) 664-5884 9¹⁹

DANIEL ENGLISH, CLERK OF THE
DISTRICT COURT

By 

Deputy Clerk



MICHAEL E. RAMSDEN, ISB #2368
RAMSDEN & LYONS, LLP
618 North 4th Street
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Telephone: (208) 664-5818
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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2007 OCT -1 AM 9:19

CLERK DISTRICT COURT


DEPUTY

Attorneys for Defendants Harnes

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff,

vs.

RICHARD and SHERRY HARNES,
husband and wife, and BAKER
COMMODITIES, INC., a Delaware
Corporation, and JOHN DOES 1-10,

Defendants.

Case No. CV-05-5010

JUDGMENT ON ARBITRATION
AWARD

This matter came on for hearing before the Court, Honorable Charles W. Hosack, presiding, on the defendants Harnes' Motion to Confirm Arbitration Award and for Entry of Judgment. The issues having been duly heard on the motion and the Court having entered its order confirming the arbitration award and granting the motion to enter judgment; now therefore,

IT IS ORDERED AND ADJUDGED

That the plaintiff take nothing, that the action against defendants Richard and Sherry

Harnes be dismissed on the merits, and that the defendants Richard and Sherry Harnes

may seek to
recover of the plaintiff, ~~The Grease Spot, Inc.~~, their costs pursuant to I.R.C.P. 54.

ash
DATED this *27* day of *Sept* July, 2007.

Charles W. Hosack

Charles W. Hosack, District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the 01 day of Oct, 2007, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael B. Hague
Paine, Hamblen, Coffin, Brooke & Miller, LLP
PO Box E
Coeur d'Alene, ID 83816

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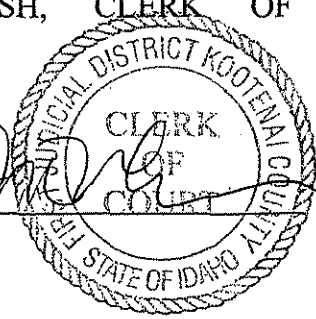
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___ US Mail
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___ Hand Delivered
 Facsimile (208) 664-5884 *9/19*

DANIEL ENGLISH, CLERK OF THE DISTRICT COURT

By *Kathleen English*

Deputy Clerk



MICHAEL E. RAMSDEN, ISB #2368
RAMSDEN & LYONS, LLP
618 North 4th Street
P.O. Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: (208) 664-5818
Facsimile: (208) 664-5884

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2007 OCT 11 PM 4:19

CLERK DISTRICT COURT

Clara P...
DEPUTY *det*

Attorneys for Defendants Harnes

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff,

vs.

RICHARD and SHERRY HARNES,
husband and wife, and BAKER
COMMODITIES, INC., a Delaware
Corporation, and JOHN DOES 1-10,

Defendants.

Case No. CV-05-5010

MEMORANDUM OF COSTS AND
APPLICATION FOR ATTORNEY FEES
INCLUDING AFFIDAVIT OF COUNSEL

COME NOW defendants Richard and Sherry Harnes pursuant to I.R.C.P. 54(d)(5), and submit their Memorandum of Costs and Application for Attorney Fees pursuant to I.R.C.P. 54(e)(5).

A. COSTS ALLOWABLE AS A MATTER OF RIGHT.

- | | | |
|----|--------------------|----------|
| 1. | Court Filing Fees: | \$52.00 |
| 2. | Deposition Expense | |
| | a. Scott Wessling | \$420.84 |

b.	Richard Harnes	\$336.65
c.	John McCartney	\$249.26
d.	Martin R. Eckstein	\$360.80

The undersigned attorney certifies that the foregoing items of cost were actually and necessarily incurred in the defense of this action in behalf of defendants Richard and Sherry Harnes, were paid, are correct, and are in compliance with I.R.C.P. 54(d)(1)(C).

B. ATTORNEY FEES – Rule 54(e)(1)

1. Right to Attorney's Fees

The Harnes assert that they have the right to claim attorney fees pursuant to Idaho Code Section 12-120(3). That section provides that attorney's fees "shall be allowed" in a suit on a commercial transaction to the prevailing party. This action involved a commercial transaction within the meaning of the law and the Harnes are the prevailing parties. This action was for breach of a contract for the purchase and sale of The Grease Spot, Inc. based on the asserted violation of a non-competition clause in the agreement. The complaint also asked for relief based on the breach of the covenant of good faith and fair dealing, for unjust enrichment, violation of the trade secrets act arising out of the breach of the contract and for injunctive relief arising out of the breach of the contract. This action was instituted by the plaintiff on July 5, 2005. On August 8, 2005, the plaintiff served written discovery on the Harnes and co-defendant Baker Commodities, Inc. On November 21, 2005, the Harnes moved this court to dismiss and compel arbitration. The plaintiff opposed the motion. The plaintiff took the depositions of Richard Harnes, John McCartney and Martin Eckstein on February 22 and 23, 2006. The co-defendant Baker Commodities, Inc. took the deposition of Scott Wessling on

February 22, 2006. After further briefing, hearing and oral argument on the motion to dismiss and compel arbitration, the court entered its order compelling arbitration and staying litigation on March 20, 2006. The matter was then arbitrated at a hearing before the Hon. Ron Schilling on March 20 and 21, 2007. Judge Schilling issued his decision on June 25, 2007. The arbitration award was confirmed by the court and judgment in behalf of the Harnes was entered on October 1, 2007.

The arbitration provision in the contract did not provide for an award of attorney fees to the prevailing party. Idaho Code § 7-910 prohibits an award of attorney fees in arbitration absent an express agreement by the parties. Idaho Code § 7-910; *Emery*, 120 Idaho at 246, 815 P.2d at 444; *Bingham County Comm'n*, 105 Idaho at 42, 665 P.2d at 1052; *Storrer*, 129 Idaho at 746, 932 P.2d at 374. However, this statute only applies to fees "incurred in the conduct of the arbitration," not those incurred in proceedings to confirm an arbitration award. *Driver*, 139 Idaho at 430, 80 P.3d at 1031. *Moore v. Omnicare, Inc.*, 141 Idaho 809, 118 P.3d 141, 152 (2005). Therefore, at least the attorney fees incurred by the Harnes before March 20, 2006 and after the arbitration award was entered on June 25, 2007 are properly recoverable here under Idaho Code § 12-120(3). Fees are also recoverable here under Idaho Code § 7-914.

I.C. § 7-914 specifically addresses arbitration confirmation proceedings. *See Owen v. Burcham*, 100 Idaho 441, 444, 599 P.2d 1012, 1015 (1979) ("where both a general statute and a special or specific statute deal with the same subject matter, the provisions of the special or specific statute will control those of the general statute"): Section 7-914 states that once an order confirming or denying an award is entered, "[c]osts of the application and of the proceedings subsequent thereto, and *disbursements* may be awarded by the court." I.C. § 7-914 (emphasis added). Whether the term "disbursements" in I.C. § 7-914 includes attorney fees is not clear on its face. The UAA provides that it "shall be construed as to effectuate its general

purpose to make uniform the law of those states which enact it." I.C. § 7-921. Of those courts addressing this precise issue, the majority construe "disbursements" to include attorney fees. See *Blitz v. Beth Isaac Adas Israel Congregation*, 352 Md. 31, 720 A.2d 912, 916-17 (1998); *Canon Sch. Dist. v. W.E.S. Constr. Co.*, 180 Ariz. 148, 882 P.2d 1274, 1279 (Ariz.1994); *County of Clark v. Blanchard Constr. Co.*, 98 Nev. 488, 653 P.2d 1217, 1220 (1982); *Wachtel v. Shoney's Inc.*, 830 S.W.2d 905, 909 (Tenn.App.1991); *Anchorage Med. & Surgical Clinic v. James*, 555 P.2d 1320 (Alaska 1976), overruled on other grounds by *Ahtna, Inc. v. Ebasco Constructors, Inc.*, 894 P.2d 657 (Alaska 1995); *Stein v. Feldmann*, 85 Ill.App.3d 973, 41 Ill.Dec. 270, 407 N.E.2d 768, 769 (1980): *But see Terra West Towne Homes, L.L.C. v. STU Henkel Realty*, 298 Mont. 344, 996 P.2d 866, 873 (2000); *Floors, Inc. v. B.G. Danis of New England, Inc.*, 380 Mass. 91, 401 N.E.2d 839, 844 (1980).

The purpose of the UAA is "to afford the opportunity to reach a final disposition of differences between parties in an easier, more expeditious manner than by litigation." *MSP Collaborative Developers v. Fid. & Deposit Co. of Maryland*, 596 F.2d 247, 250 (7th Cir.1979): *See also Phoenix Newspapers, Inc. v. Phoenix Mailers Union Local 752*, 989 F.2d 1077, 1084 (9th Cir.1993) (noting that one of the central purposes of arbitration is to achieve speedy and fair resolutions of disputes). As the Supreme Court of Arizona noted, interpreting the term "disbursements" to include attorney fees "promote [s] the public policy of encouraging early payment of valid arbitration awards and the discouragement of nonmeritorious protracted confirmation challenges." *Canon Sch. Dist.*, 882 P.2d at 1279. Such an interpretation is in line with the purposes of the UAA and of arbitration generally.

Some aspects of the UAA also encourage an interpretation that attorney fees are not allowed. Section 7-910 states, "Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award." I.C. § 7-910 (emphasis added). However, this section only applies to fees "incurred in the conduct of the arbitration," not the proceedings to confirm the arbitration award. Considering the very limited scope of challenges to an arbitration award the limitation of section 7-910 should not be extended beyond its express terms. Otherwise the party

successful in arbitration will be deprived of the full benefits of that award.

Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024, 1031 (Idaho 2003).

This action is not an independent one for the recovery of attorney fees pursuant to an arbitration. Therefore the reasoning of *Storrer v. Kier Const. Corp.*, 129 Idaho 745, 932 P.2d 373, 376 (Ct.App. 1997) and *Barbee v. WMA Securities, Inc.*, 143 Idaho 391, 146 P.3d 657, 661 (2006) does not apply.

Just because it is outside the scope of an arbitrator's authority to award attorney fees absent an agreement of the parties does not mean that the court does not have authority to do so. However, that limitation upon an arbitrator does not extend to the authority of the district court to award attorney fees pursuant to a fee shifting statute. In *Emery v. United Pacific Ins. Co.*, 120 Idaho 244, 815 P.2d 442 (1991), overruled on other grounds in *Greenough v. Farm Bureau Mut. Ins. Co. of Idaho*, 142 Idaho 589, 130 P.3d 1127, 1130-31 (2006), the Idaho Supreme Court upheld the trial court's award of attorney fees incurred in litigation and a UIM arbitration, because the Insured was compelled to file litigation to recover benefits under its contract before the arbitration was conducted. Idaho Code § 41-1839 became part of the contract between the parties in that case and overrode the AAA rules that each party would bear its own costs in the arbitration. A fee shifting statute like Idaho Code § 41-1839 is involved in this case. Idaho Code § 12-120(3). Plaintiff commenced this action in district court and specifically prayed for attorney fees pursuant to Idaho Code § 12-120. Plaintiff resisted the motion to compel arbitration and litigation in this action proceeded until this court's order of March 20, 2006. After the entry of the award, the parties returned to this court for confirmation of the award and entry of judgment. Unlike the situation in *Emery*, the contract in this case was

silent on the question of attorney fees. Therefore there is no reason for this court to engage in the analysis that the provisions of Idaho Code § 12-120 override the agreement of the parties. This action involved a commercial transaction and the Harnes prevailed in that action, although the dispute was referred to arbitration. Therefore, under the reasoning of *Emery*, the Harnes are entitled to their attorney fees in defending this action, including those incurred in defending in the arbitration.

2. Rule 54(e)(3) Factors

a. The time and labor required is reflected in the attached itemization of dates, tasks and charges, Exhibit A.

b. The questions involved were not novel and involved established law.

c. The skill required to perform the legal services properly could not have been less than that of the lawyers representing the Harnes. Attorney Ramsden has practiced law for over 28 years. He has been involved in the issues presented in this case for all of those years. The issues raised, including the enforceability of the non-competition provision and the analysis of the plaintiff's damages claim involved careful analysis of the law applicable to the facts and careful research for cases decided involving the issues raised. The Harnes desired experienced lawyers to represent them.

d. The undersigned is familiar with what numerous Coeur d'Alene lawyers charge. The fees claimed here are at the rate of \$200 per hour. The undersigned knows of other lawyers in Kootenai County who charge these hourly rates. The rates are commensurate with what the undersigned charges other private clients for his services.

e. The fees charged to the Harnes are based solely on the time spent and are

not contingent.

f. The Harnes imposed no time limitations on counsel, but did ask that counsel proceed promptly and efficiently without unnecessary duplication of effort. The attached billings are net of time determined by the undersigned to have been duplicative; the client was credited for this amount, which was \$1,100. The fees incurred by attorney Brent Schlotthauer incurred prior to undersigned counsel's appearance in this case, \$1,252.00 are not claimed because undersigned counsel was required to recapitulate the work done by Mr. Schlotthauer to familiarize himself with the case.

g. The amount at stake was \$124,634.90 as urged by the plaintiff's proof at the arbitration hearing. The result obtained was a judgment in favor of the Harnes in all respects.

h. The undersigned has no prior relationship with the Harnes and has not performed work for them in the past.

i. The undersigned is not aware of awards in similar cases.

j. The undersigned charges an expense for automated legal research in addition to the hourly fee, which is reflected in the attachment, Exhibit B.

Total Attorney Fees	\$32,867.50
Total Automated Legal Research	\$463.43

3. Affidavit of Attorney – Rule 54(e)(5)

The undersigned, being duly sworn on their oath, hereby states that the attorney fees claimed herein are based on the time actually spent in the course of this litigation in the amount of \$32,867.50. The electronic legal research fees charged in the amount of \$463.43 were

charged to the Harnes. The undersigned believes that the hourly rate is fair and reasonable, in that he has other clients who paid at said rates at the time this case commenced.


C. TOTAL COSTS AND ATTORNEY FEES CLAIMED

The total costs and attorney fees claimed are:

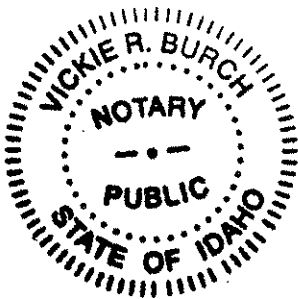
Costs as a Matter of Right	\$1,419.55
Attorney Fees	\$32,867.50
Electronic Legal Research	\$463.43
Total	<u>\$34,750.48</u>


DATED this 11 day of October, 2007.

RAMSDEN & LYONS, LLP

By 
Michael E. Ramsden, Of the Firm
Attorneys for Defendants Harnes

Subscribed and sworn to before me this 11th day of October, 2007, as pertains to the Attorney's Affidavit, Section C. above.




Notary Public for Idaho
Residing at Spokane Valley, Washington
Commission Expires: 4-23-2013

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of October, 2007, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael Hague
Paine, Hamblen, Coffin, Brooke & Miller, LLP
PO Box E
Coeur d'Alene, ID 83816

US Mail
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 Facsimile (208) 667-8470



Michael E. Ramsden

Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount	Ref #
Client ID 900.10100	Harnes/Richard & Sherry							
900.10100	01/24/2006	1	A	85	200.00	1.00	200.00	ARCH
900.10100	01/30/2006	1	A	85	200.00	0.20	40.00	ARCH
900.10100	01/30/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	01/31/2006	1	A	85	200.00	7.10	1420.00	ARCH
900.10100	02/02/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	02/07/2006	1	A	1	200.00	4.00	800.00	ARCH
900.10100	02/08/2006	15	A	85	200.00	0.30	60.00	ARCH
900.10100	02/08/2006	1	A	1	200.00	3.00	600.00	ARCH
900.10100	02/08/2006	16	A	85	200.00	0.20	40.00	ARCH
900.10100	02/09/2006	1	A	85	200.00	1.50	300.00	ARCH
900.10100	02/09/2006	1	A	85	200.00	0.20	40.00	ARCH
900.10100	02/10/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	02/14/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	02/17/2006	1	A	85	200.00	2.00	400.00	ARCH
900.10100	02/17/2006	1	A	85	200.00	0.50	100.00	ARCH
900.10100	02/20/2006	1	A	85	200.00	0.30	60.00	ARCH
900.10100	02/21/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	02/22/2006	1	A	85	200.00	8.50	1700.00	ARCH
900.10100	02/23/2006	1	A	85	200.00	2.90	580.00	ARCH
900.10100	02/23/2006	15	A	85	200.00	7.70	1540.00	ARCH
900.10100	02/24/2006	1	A	85	200.00	0.20	40.00	ARCH
900.10100	03/20/2006	1	A	85	200.00	0.30	60.00	ARCH
900.10100	03/23/2006	1	A	85	200.00	0.20	40.00	ARCH
900.10100	03/31/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	04/21/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	05/24/2006	1	A	85	200.00	0.10	20.00	ARCH
900.10100	06/15/2006	1	A	85	200.00	0.50	100.00	ARCH
900.10100	06/29/2006	9	A	85	200.00	1.90	380.00	ARCH
900.10100	06/30/2006	9	A	85	200.00	2.30	460.00	ARCH
900.10100	07/24/2006	9	A	85	200.00	0.10	20.00	ARCH
900.10100	07/24/2006	9	A	85	200.00	0.10	20.00	ARCH
900.10100	07/24/2006	9	A	85	200.00	1.30	260.00	ARCH
900.10100	08/01/2006	9	A	85	200.00	3.20	640.00	ARCH
900.10100	08/01/2006	9	A	85	200.00	0.10	20.00	ARCH
900.10100	08/23/2006	9	A	85	200.00	2.30	460.00	ARCH
900.10100	09/11/2006	9	A	85	200.00	0.10	20.00	ARCH
900.10100	09/21/2006	9	A	85	200.00	0.10	20.00	ARCH
900.10100	09/26/2006	9	A	85	200.00	0.10	20.00	ARCH
900.10100	10/03/2006	1	A	146			0.00	ARCH
900.10100	10/05/2006	9	A	85	200.00	0.10	20.00	ARCH

Client	Trans Date	H Tmkr P	Tcd	Rate	Hours to Bill	Amount	Ref #
Client ID 900.10100	Harnes/Richard & Sherry						
900.10100	10/06/2006	9 A	85	200.00	1.10	220.00	Prepare for and attend meeting with Mr. & Mrs. Harnes to go over discovery responses. ARCH
900.10100	10/09/2006	9 A	85	200.00	0.10	20.00	Teleconference with Mike Hague, re: discovery responses. ARCH
900.10100	10/11/2006	9 A	85	200.00	0.80	160.00	Draft revisions and objections to discovery requests. ARCH
900.10100	10/11/2006	9 A	85	200.00	0.10	20.00	Teleconference with Dick Harnes, re: scheduling a meeting to review final discovery responses. ARCH
900.10100	10/11/2006	9 A	85	200.00		0.00	Leave voice mail for Mike Hague, re: outstanding discovery responses. ARCH
900.10100	10/12/2006	9 A	85	200.00	0.70	140.00	Draft revisions to discovery responses and meet with clients to finalize discovery responses. ARCH
900.10100	10/23/2006	9 A	85	200.00	0.70	140.00	Compare descriptions on invoices received from client to time line established by plaintiffs ARCH
900.10100	10/27/2006	9 A	85	200.00	0.90	180.00	Review and analysis of arbitration rules in preparation for arbitration. ARCH
900.10100	10/30/2006	9 A	85	200.00	0.20	40.00	Receipt and review letter from Ron Schilling, re: the 12/18-19 arbitration. ARCH
900.10100	10/30/2006	9 A	85	200.00	0.10	20.00	Draft letter to clients, re: arbitration deadlines. ARCH
900.10100	10/31/2006	9 A	85	200.00	0.10	20.00	Review and revise letter to clients, re: arbitration. ARCH
900.10100	11/08/2006	9 A	85	200.00	0.20	40.00	Review, analysis and evaluation of invoices provided by Mr. Harnes. ARCH
900.10100	12/06/2006	1 A	85	200.00	0.30	60.00	Matters re discovery and arbitration date. ARCH
900.10100	12/06/2006	9 A	85	200.00	0.50	100.00	Receipt and review deposition transcript of Martin Eckstein (e-mail/e-transcript) from M&M Court Reporting. ARCH
900.10100	12/08/2006	9 A	85	200.00	0.50	100.00	Receipt and review deposition transcript of Richard Harnes, e-transcript from M&M Court Reporting. ARCH
900.10100	12/08/2006	9 A	85	200.00	0.10	20.00	Draft letter to Judge Schilling, re: request to reschedule arbitration. ARCH
900.10100	12/08/2006	9 A	85	200.00	0.20	40.00	Draft Motion to Vacate Arbitration. ARCH
900.10100	12/08/2006	3 A	85	200.00	0.20	40.00	Review and revise Motion to Vacate Arbitration. ARCH
900.10100	12/11/2006	9 A	85	200.00	0.50	100.00	Receipt and review e-transcript from M&M, re: deposition transcript of John McCartney. ARCH
900.10100	12/11/2006	9 A	85	200.00	0.10	20.00	Receipt and review invoices from M&M, re: deposition transcripts and receipt and review original certificate of witness and change sheet for Richard Harnes' deposition. ARCH
900.10100	12/11/2006	9 A	85	200.00	0.20	40.00	Prepare for Motion to Vacate Arbitration. ARCH
900.10100	12/11/2006	9 A	85	200.00	0.10	20.00	Teleconference with clients re: experts and disclosures. ARCH
900.10100	12/11/2006	9 A	85	200.00	1.40	280.00	Continue research and legal analysis, re: Idaho laws relating to covenants not to compete. ARCH
900.10100	12/11/2006	9 A	85	200.00	0.30	60.00	Teleconference with Judge Schilling & Mike Hague, re: Motion to Vacate Arbitration. ARCH
900.10100	12/18/2006	9 A	85	200.00	0.10	20.00	Receipt and review Order Resetting Hearing from Ron Schilling, Arbitrator. ARCH
900.10100	01/04/2007	17 A	85	75.00	0.10	7.50	Draft letter to clients, re: M&M invoices for deposition transcripts & forward same. ARCH
900.10100	01/22/2007	9 A	85	200.00	0.10	20.00	Receipt and review of letters from M&M Court Reporting re: unable to obtain the signatures of John McCartney, Richard Harnes, and Martin Eckstein. ARCH
900.10100	02/06/2007	1 A	85	200.00	0.30	60.00	Matters re status of Written Interrogatories and Requests for Production of Documents to Plaintiff. ARCH
900.10100	02/16/2007	1 A	85	200.00	3.10	620.00	Review oral deposition transcript of Plaintiff; preparation of Written Interrogatories and Requests for Production of Documents to Plaintiff in behalf of Client. ARCH
900.10100	02/16/2007	1 A	85	200.00	2.50	500.00	Preparation of Written Interrogatories and Requests for Production of Documents to Plaintiff; review oral deposition transcript of Richard Wessell of Plaintiff. ARCH
900.10100	03/08/2007	1 A	85	200.00	2.00	400.00	Review file in preparation for meeting with Insured and prearbitration statement. ARCH
900.10100	03/12/2007	1 A	85	200.00	2.20	440.00	Matters re preparation for Arbitration hearing; preparation of prehearing brief re same; conference with Dick and Sherry Harnes re same. ARCH
900.10100	03/13/2007	1 A	85	200.00	5.70	1140.00	Preparation of Pre-Arbitration Statement in behalf of Clients; telephone conference with Client re availability of Hutterites for Arbitration hearing. ARCH
900.10100	03/14/2007	1 A	85	200.00	1.50	300.00	Review Plaintiff's witness list and exhibit list; preparation for and attendance at teleconference with arbitrator. ARCH
900.10100	03/14/2007	1 A	85	200.00	1.00	200.00	Review oral deposition transcript's of Plaintiff and Client Dick Harnes in preparation for arbitration. ARCH
900.10100	03/15/2007	1 A	85	200.00	6.50	1300.00	Conference with Plaintiff's Attorney and review source documents for damage spreadsheet; review oral deposition transcript's of Marty Eckstein and John McCartney. ARCH
900.10100	03/16/2007	1 A	85	200.00	5.50	1100.00	Review oral deposition transcript's and exhibits in preparation for Arbitration hearing. ARCH
900.10100	03/17/2007	1 A	85	200.00	2.20	440.00	Review oral deposition transcript's and exhibits in preparation for Arbitration hearing. ARCH
900.10100	03/18/2007	1 A	85	200.00	4.50	900.00	Review oral deposition transcript's and exhibits in preparation for Arbitration hearing. ARCH
900.10100	03/19/2007	1 A	85	200.00	8.00	1600.00	Preparations for Arbitration hearing. ARCH
900.10100	03/20/2007	1 A	85	200.00	12.40	2480.00	Preparations for and attend arbitration hearing and conference with Clients. ARCH
900.10100	03/21/2007	1 A	85	200.00	8.50	1700.00	Preparation for and attendance at Arbitration hearing. ARCH
900.10100	03/30/2007	1 A	85	200.00	2.00	400.00	Review hearing notes and preparation of post-hearing brief in behalf of Clients. ARCH
900.10100	03/31/2007	1 A	85	200.00	2.80	560.00	Further preparation of post-hearing brief in behalf of Clients. ARCH
900.10100	04/01/2007	1 A	85	200.00	3.50	700.00	Further preparation of post-hearing brief in behalf of Clients. ARCH
900.10100	04/02/2007	1 A	85	200.00	5.20	1040.00	Final preparation of post-hearing brief in behalf of Clients. ARCH
900.10100	04/11/2007	1 A	85	200.00	2.60	520.00	Review Plaintiff's Post-Arbitration Brief; preparation of Reply Brief. ARCH

Client ID	Client	Trans Date	Tmkr	H P	Tcd	Rate	Hours to Bill	Amount		Ref #
900.10100	Harnes/Richard & Sherry	04/12/2007	1	A	85	200.00	3.30	660.00	Final preparation of Reply Post Arbitration Statement in behalf of Clients.	ARCH
900.10100		04/12/2007	1	A	85	200.00	0.50	100.00	Conference with Co-defendant Baker Commodities Counsel re outcome of arbitration and testimony adduced.	ARCH
900.10100		06/26/2007	1	A	85	200.00	2.90	580.00	Review pleadings, case law and agreement of the parties re application for Attorney fees and costs of Arbitration and procedural means of accomplishing same.	ARCH
900.10100		06/27/2007	1	A	85	200.00	3.80	760.00	Preparation of Motion to Confirm Arbitration Award and Motion to Modify Award for consideration of arbitrator's fees and expenses.	ARCH
900.10100		06/28/2007	1	A	85	200.00	1.50	300.00	Further preparation of Motion to Change Award, Motion to Confirm Arbitration Award and letter to Clients.	ARCH
900.10100		06/28/2007	1	A	85	200.00	0.10	20.00	Telephone conference with Co-defendant Baker Counsel; fax Decision to Co-defendant Baker Counsel.	ARCH
900.10100		07/10/2007	1	A	85	200.00	0.10	20.00	Receipt and review Plaintiff's Objection to Client's Motion to Tax Costs.	ARCH
900.10100		07/10/2007	1	A	85	200.00	0.50	100.00	Preparation of Motion to Change Award (District Court); review and revise Motion to Confirm Arbitration Award and for Entry of Judgment; preparation of Judgment in behalf of Clients.	ARCH
900.10100		07/11/2007	1	A	85	200.00	1.10	220.00	Further preparation of Motion to Confirm Arbitration Award, Motion to Change Arbitration Award; Affidavit in support of Motion to Change Arbitration Award, Order Granting Motion to Confirm Arbitration Award and Judgment.	ARCH
900.10100		07/12/2007	1	A	85	200.00	0.10	20.00	Receipt and review Addendum to Decision from Arbitrator.	ARCH
900.10100		07/13/2007	1	A	85	200.00	0.30	60.00	Receipt and review e-mail from Co-defendant Baker Commodities Counsel; reply to same.	ARCH
900.10100		07/13/2007	1	A	85	200.00	0.10	20.00	Receipt and review Plaintiff's Objection to Defendants' Motion to Change Award (District Court).	ARCH
900.10100		07/16/2007	12	A	85	200.00	0.30	60.00	Preparation of Defendant's Harnes' Motion to Confirm Arbitration Award & Entry of Judgment, Order Granting Defendant Harnes' Motion to Confirm Arbitration Award & for Entry of Judgment & Judgment on Arbitration Award.	ARCH
900.10100		09/27/2007	1	P	85	200.00	1.00	200.00	Preparation for and attendance at hearing on Motion to Confirm Arbitration Award and for Entry of Judgment.	103
900.10100		10/01/2007	1	P	85	200.00	0.10	20.00	Receipt and review Order Confirming Arbitration Award and Judgment on Arbitration Award from District Judge.	104
900.10100		10/10/2007	1	P	85	200.00	1.00	200.00	Research re: application for attorney fees and preparation of Memorandum of Costs and Application for Attorney Fees.	105
900.10100		10/11/2007	1	P	85	200.00	2.90	580.00	Final preparation of Memorandum of Costs and Application for Attorney Fees in behalf of Client.	106

GRAND TOTALS

Billable 164.40 32867.50

056

Detail Cost Transaction File List
Ramsden and Lyons

Client	Trans Date	Tmkr	H P	Tcd	Rate	Amount	Ref #
Client ID 900.10100	Harnes/Richard & Sherry						
900.10100	01/24/2006	1	A	217	0.200	138.40 Photocopies @.20/page.	ARCH
900.10100	01/30/2006	1	A	206	1.000	6.00 Fax transmission expense @1.00/page.	ARCH
900.10100	01/30/2006	1	A	206	1.000	3.00 Fax transmission expense @1.00/page.	ARCH
900.10100	01/31/2006	1	A	212	1.400	75.03 Online research expense.	ARCH
900.10100	02/01/2006	1	A	206	1.000	3.00 Fax transmission expense @1.00/page.	ARCH
900.10100	02/08/2006	1	A	212	1.400	85.08 Online research expense.	ARCH
900.10100	02/08/2006	1	A	212	1.400	60.77 Online research expense.	ARCH
900.10100	02/17/2006	1	A	206	1.000	6.00 Fax transmission expense @1.00/page.	ARCH
900.10100	10/06/2006	1	A	217	0.200	6.00 Photocopies @.20/page.	ARCH
900.10100	10/12/2006	1	A	217	0.200	7.20 Photocopies @.20/page.	ARCH
900.10100	10/12/2006	1	A	217	0.200	12.00 Photocopies @.20/page.	ARCH
900.10100	10/23/2006	1	A	217	0.200	29.40 Photocopies @.20/page.	ARCH
900.10100	12/11/2006	1	A	206	1.000	9.00 Fax transmission expense @1.00/page.	ARCH
900.10100	12/11/2006	1	A	206	1.000	3.00 Fax transmission expense @1.00/page.	ARCH
900.10100	12/20/2006	1	A	214	1.500	7.34 Long distance telephone expense.	ARCH
900.10100	02/16/2007	1	A	206	1.000	8.00 Fax transmission expense @1.00/page.	ARCH
900.10100	03/13/2007	1	A	206	1.000	46.00 Fax transmission expense @1.00/page.	ARCH
900.10100	03/19/2007	1	A	206	1.000	3.00 Fax transmission expense @1.00/page.	ARCH
900.10100	03/19/2007	1	A	206	1.000	5.00 Fax transmission expense @1.00/page.	ARCH
900.10100	04/04/2007	1	A	206	1.000	34.00 Fax transmission expense @1.00/page.	ARCH
900.10100	04/11/2007	1	A	212	1.400	115.08 Research expense.	ARCH
900.10100	04/12/2007	1	A	206	1.000	20.00 Fax transmission expense @1.00/page.	ARCH
900.10100	04/13/2007	1	A	217	0.200	15.20 Photocopies @.20/page.	ARCH
900.10100	06/25/2007	1	A	217	0.200	2.00 Photocopies @.20/page.	ARCH
900.10100	06/27/2007	1	A	212	1.400	127.47 Research expense.	ARCH
900.10100	06/28/2007	1	A	206	1.000	10.00 Fax transmission expense @1.00/page.	ARCH
900.10100	07/11/2007	1	A	217	0.200	18.00 Photocopies @.20/page.	ARCH
900.10100	07/16/2007	1	A	217	0.200	7.00 Photocopies @.20/page.	ARCH

GRAND TOTALS

Billable 861.97

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2007 OCT 25 AM 9:36

CLERK DISTRICT COURT

DEPUTY

MICHAEL B. HAGUE
PAINE, HAMBLER, COFFIN,
BROOKE & MILLER LLP
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P.O. Box E
Coeur d' Alene, ID 83816-0328
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ISBA# 3574

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC., an Idaho
Corporation,

Plaintiff,

vs.

RICHARD and SHERRY HARNES, husband
and wife, and BAKER COMMODITIES, INC.,
a Delaware Corporation, and JOHN DOES 1-10,

Defendants.

)
) Case No. CV 05-5010
)
) **OBJECTION AND MOTION TO**
) **DISALLOW DEFENDANTS HARNES'**
) **MOTION OF COSTS AND**
) **APPLICATION FOR ATTORNEY FEES**
) **INCLUDING AFFIDAVIT OF COUNSEL**
)
)
)
)

Come now the above Plaintiff, by and through its attorney of record, Michael B. Hague,
pursuant to IRCP 54(d)(6) and IRCP 54(e)(6), and moves the court to disallow the costs and


**OBJECTION AND MOTION TO DISALLOW
DEFENDANTS HARNES' MOTION OF COSTS
AND APPLICATION FOR ATTORNEY FEES
INCLUDING AFFIDAVIT OF COUNSEL - 1**

attorney fees applied for by Defendants Harnes in this action. This motion is based on the records and files herein, the brief of counsel and supporting documents to be filed hereafter, and the arguments to be presented at the time of the hearing on this Objection and Motion.

Plaintiff requests oral argument hereon.

DATED this 25th day of October, 2007.

PAINE, HAMBLEN, COFFIN,
BROOKE & MILLER LLP

By 

Michael B. Hague
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of October, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Joel P. Hazel
Witherspoon, Kelley, Davenport & Toole, P.S.
608 Northwest Blvd., Suite 401
Coeur d'Alene, ID 83814-2146,

- U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (208) 667-8470

Michael E. Ramsden
Ramsden & Lyons
618 North 4th Street
P. O. Box 1336
Coeur d'Alene, ID 83816-1336

- U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (208) 664-5884



Michael B. Hague

OBJECTION AND MOTION TO DISALLOW
DEFENDANTS HARNES' MOTION OF COSTS
AND APPLICATION FOR ATTORNEY FEES
INCLUDING AFFIDAVIT OF COUNSEL - 3

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 3/24

2007 NOV 21 PM 3:26

CLERK DISTRICT COURT
[Signature]
DEPUTY

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PAINE HAMBLEN LLP
701 Front Avenue, Suite 101
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ISBA# 3574

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC., an Idaho Corporation,)

Plaintiff,)

vs.)

RICHARD and SHERRY HARNES, husband and wife, and BAKER COMMODITIES, INC., a Delaware Corporation, and JOHN DOES 1-10,)

Defendants.)

) Case No. CV 05-5010
)
) **Memorandum in Opposition to**
) **Defendant Harnes' Application for**
) **Attorney Fees and Costs**
)

ATTORNEY FEES

It is not permissible to award attorney fees in arbitration unless the arbitration agreement expressly provides otherwise. I.C. § 7-910; *Storrier v. Kier Construction Corp.*, 129 Idaho 745, 746, 932 P.2d 373 (Ct. App. 1997). Furthermore there is no:

MEMORANDUM IN OPPOSITION TO DEFENDANT
HARNES' APPLICATION FOR ATTORNEY FEES AND COSTS - 1

...basis to conclude that the legislature, in enacting I.C. §12-120(3), intended to grant parties an independent right of action simply for the recovery of attorney fees incurred in arbitration, when such fees clearly cannot be awarded as part of the arbitration.

Id., 129 Idaho @ 474

The Harnes ask this court to award them attorney fees under I.C. § 12-120(3), under the same theory as the unsuccessful applicant in *Storrer*. The court should deny the Harnes' request for the same reason.

Furthermore, the Harnes seek attorney fees incurred both before and after the arbitration proceedings, based on I.C. § 7-914. That statute provides that "(c)osts of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court." The statute, on its face, applies only to expenses incurred after the arbitration, and therefore has no applicability to events before the arbitration, and does not serve as a legal basis for awarding attorney fees incurred before the arbitration.

In support of their claim for post-arbitration attorney fees, the Harnes cite and quote *Driver v. SI Corp*, 139 Idaho 423, 80 P.3d 1024 (2003). The *Driver* opinion discussed the split of authorities as to whether "disbursements" includes attorney fees, and ruled that they did in that case out of concern about "nonmeritorious protracted confirmation challenges" and the prospect that:

(o) otherwise the party successful in arbitration will be deprived of the full benefits of that award.

139 Idaho @ 429.

Here there was no "protracted confirmation challenge", nonmeritorious or otherwise. Indeed, under I.C. § 7-911, the proper procedure upon the issuance of an arbitrator's award is for the party seeking confirmation to simply apply to the court for confirmation. Unless there is an objection or motion to modify or vacate the arbitrator's award, confirmation by the court is supposed to be automatic. It is unreasonable for the Harnes to have varied from the prescribed process by noting up, preparing for and attending oral argument on a motion for confirmation in the absence of any objection to that motion.

The Harnes' reliance on *Emery v United Pacific Ins. Co.*, 120 Idaho 244, 815 P.2d 442 (1991) is misplaced. First, *Emery* and its progeny were summarily overruled by *Greenough v. Farm Bureau Mut. Ins. Co. of Idaho*, 142 Idaho 589, 130 P.3d 1127 (2006). Second, insurance contracts are contracts of adhesion, and the public policy concerns inherent in the business of insurance give rise to governmental authority to regulate what terms an insurance contract must or must not have. See, generally, Title 41, Idaho Code. Idaho Code § 41-1839 is a required provision implied in every contract of insurance in Idaho. *Pendlebury v. Western Casualty & Sur. Co.*, 89 Idaho 456, 406 P.2d 129 (1965); *Emery*, supra, 120 Idaho @ 247. Having found that the language of I.C. § 41-1839 is an implied, albeit required, term in the insurance contract, the *Emery* court was able to reconcile the provisions of that statute with rule that "all other

expenses of the arbitration....shall be borne equally by the parties, unless they agree otherwise..."

120 Idaho @ 246-247.

Idaho Code § 12-120(3), by contrast, is not a required or implied term in any contract. If it were, the Court in the *Storrer* would not have affirmed the ruling of:

....the district court [which] rejected Storrer's contention that a right to recover attorney fees under I.C. § 12-120(3) is implied into every contract involving a commercial transaction.

129 Idaho @ 747 (emphasis added).

Because the parties, here, entered into a binding arbitration agreement, and because that agreement did not have a provision that the prevailing party should recover its attorney fees, under Idaho law, no attorney fees may be awarded by either the arbitrator or the court.

Finally, with further respect to the Harnes' claim for attorney fees incurred before arbitration, the Court should distinguish between work done specifically to have arbitration ordered and work done relative to the merits of the case. The research, investigation, meetings, discovery and depositions done in this case were done in contemplation of presenting the case to the ultimate "decision maker", which in this case was the arbitrator. There was never any trial or evidentiary hearing before the Court at which the fruits of that work was presented or considered. All of it was presented to the arbitrator, and as such was work done in connection with the arbitration, for which no attorney fee award may be made.

COSTS

Idaho Code § 7-910 allows for costs to be assessed "as provided in the [arbitrator's] award". The arbitrator did not provide for the costs the Harnes seek here, and therefore those costs should not be allowed.

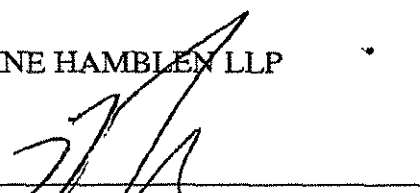
Further, the Harnes seek substantial costs for deposition transcripts. Even if IRCP 54(d) applied to this case, the rule provides for the award of "(c)harges for reporting and transcribing of a deposition taken in preparation for trial of an action..." (emphasis added). The Harnes' materials filed in support of their claim for costs do not indicate when the transcript costs were paid, but one can tell from Exhibit "A" to those materials that counsel was aware as of March 20, 2006, that this case was proceeding to arbitration rather than "trial of an action". The Harnes have failed to show these claimed costs were incurred for the stated purpose, and as such, those costs should be denied.

The Harnes also seek to recover the cost of "Automated Legal Research". Such costs are not allowable under Rule 54 as of right, and the Harnes have made no showing that they should be awarded as discretionary costs.

DATED this 21st day of November, 2007.

PAINE HAMBLEN LLP

By


Michael B. Hague
Attorney for Plaintiff

CERTIFICATE OF SERVICE

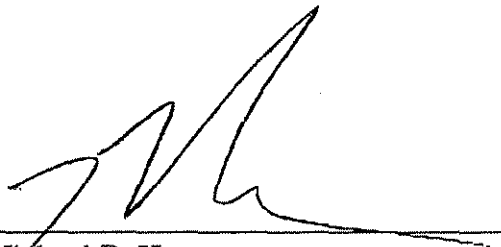
I HEREBY CERTIFY that on the 21st day of November, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Joel P. Hazel
Witherspoon, Kelley, Davenport & Toole, P.S.
608 Northwest Blvd., Suite 401
Coeur d'Alene, ID 83814-2146,

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 667-8470

Michael E. Ramsden
Ramsden & Lyons
618 North 4th Street
P. O. Box 1336
Coeur d'Alene, ID 83816-1336

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 664-5884



Michael B. Hague

STATE OF IDAHO)
County of Kootenai) SS
FILED 1-22-08

AT 2:30 o'clock p M
CLERK, DISTRICT COURT
Shari L
Deputy Clerk

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

GREASE SPOT INC.,)
)
 PLAINTIFF,)
)
 vs.)
)
 RICHARD HARNES, ETAL,)
)
 DEFENDANT.)
_____)

CASE NO. CV05-5010

MEMORANDUM
DECISION AND
ORDER

This matter is before the Court on defendant Harnes application for attorney fees and costs. The defendant Harnes obtained a Judgment on arbitration award dismissing the Compliant filed by the plaintiff, Grease Spot, Inc. Harnes then filed an application for attorney fees and costs, to which the Grease Spot objected.

The Grease Spot filed a Complaint arising out of disputes under an agreement to purchase between Harnes and the Grease Spot. After the litigation commenced, Harnes moved to compel arbitration pursuant to a provision in the agreement to purchase requiring controversies or claims arising out of the agreement to be settled by arbitration. This Court entered its Order staying litigation and compelling arbitration. The arbitrator entered a Decision ordering that the Grease Spot was not entitled to any recovery against Harnes. Harnes then moved to confirm the arbitration award and for entry of Judgment. This Court then entered the Judgment on Arbitration Award.

Harnes filed a Memorandum seeking costs and attorney fees. Harnes seeks costs as a matter of right regarding the filing fee and the costs of four (4) depositions

taken during the litigation and prior to the entry of this Court's Order compelling arbitration. Harnes also seeks attorney fees incurred both in the litigation and in the arbitration.

ATTORNEY FEES INCURRED DURING ARBITRATION

Harnes seeks recovery of attorney fees incurred in the arbitration proceeding, as listed in the itemization attached as Exhibit A to the Memorandum of Costs, for the period between the March 20, 2006, Order Compelling Arbitration and Staying Litigation and the July 12, 2007, Addendum to Decision from the arbitrator.

Harnes cites to Emery v. United Pacific Insurance Company 120 Idaho 244 (1991) as authority for a District Court awarding attorney fees incurred during arbitration, even though there was no agreement between the parties allowing an arbitrator to award attorney fees. Harnes acknowledges the holding in Storrer v. Kier Construction Corp. 129 Idaho 745 (Ct. App. 1997) specifically holding that Section 12-120(3) Idaho Code, did not grant parties a right of recovery of attorney fees incurred in arbitration when the fees could not be awarded as part of the arbitration. Storrer also referred to Wolfe v. Farm Bureau Insurance Company 128 Idaho 398 (1996) where the Supreme Court held that attorney fees incurred in an arbitration required by an insurance policy could not be recovered under Section 12-120(3). Harnes argues that the recent ruling of Storrer has no application to this case and that Emery controls. This Court does not agree.

One of Harnes arguments may be that since this case is not an independent action for attorney fees (as was the situation in Storrer), then Storrer has no application. To the Court, this is a distinction without a difference, and the rationale of the holding in Storrer is to be applied by a trial court in this case.

In short, where the statute regarding arbitration prohibits an award of attorney fees; where the parties do not have an agreement allowing an award of attorney fees in the arbitration proceeding; and where the arbitrator has not awarded attorney fees; Harnes has no basis, which this Court can discern, upon which to argue he is entitled to an award of attorney fees incurred during the arbitration.

ATTORNEY FEES PURSUANT TO SECTION 7-914, IDAHO CODE

Harnes argues for attorney fees incurred in this case after the final decision by the arbitrator, pursuant to Section 7-914, Idaho Code. Section 7-914 states that once an order affirming an award is entered, costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the Court.

In Driver v. SI Corp., 139 Idaho 423 (2003) the Supreme Court held that attorney fees are "disbursements" and are awardable in a court's discretion pursuant to Section 7-914, Idaho Code.

While Driver is authority for allowing an award for attorney fees in arbitration confirmation proceedings, and, arguably at least, the proceedings in this case following the final decision of the arbitrator are in the nature of an arbitration confirmation proceeding, the Court does not find it appropriate to make an award of attorney fees in these circumstances.

The arbitration confirmation proceedings are designed to be summary. Costs and attorney fees are not normally an issue. The confirmation of the award was a summary proceeding in this case.

In Driver, the facts of the case involved extended proceedings regarding resistance to the confirmation of the award. The Supreme Court in Driver mentioned that the award of attorney fees was necessary in order to avoid a situation where the winner in an arbitration proceeding was deprived of the benefits of the award by extended and protracted confirmation proceedings. Driver is distinguishable from the instant case.

It is this Court's finding that in the normal confirmation of arbitration proceedings pursuant to Section 7-914, an award of attorney fees is unnecessary. The Court finds that this is true in the instant case as well.

ATTORNEY FEES AND COSTS PRIOR TO ORDER COMPELLING ARBITRATION

The remaining issue is the attorney fees and costs incurred in the civil litigation prior to the Court's entry of an Order Compelling Arbitration. Harnes incurred a filing fee with the Court, and also incurred deposition costs. The statement of attorney services

show that there were attorney fees charged both for making the motion to compel arbitration and also to defend the civil litigation case itself.

A party is entitled under Rule 54 to its costs and attorney fees if it prevails in litigation involving a commercial transaction. The parties did not dispute that the underlying controversy involved a commercial transaction. The question becomes to what degree did Harnes prevail in the civil litigation, given that the ultimate resolution was in arbitration.

The Court finds that Harnes prevailed in the civil litigation with regard to the issue of compelling the arbitration. The Grease Spot commenced the civil litigation, and Harnes attempted to move the matter into arbitration. Harnes was successful in doing that. The attorney fees incurred in context of civil litigation over a commercial transaction in obtaining the order of a court compelling arbitration should be properly recoverable in the civil litigation. However, attorney fees incurred in defending or prosecuting the civil claims itself are not necessarily issues upon which a party prevailed in the civil litigation. Since the matter went into arbitration, a court would have to refer to the arbitration proceeding itself to conduct an analysis of the prevailing party. Instead, this Court looks to the issues upon which the party prevailed in civil litigation itself. The issue upon which Harnes prevailed was the issue compelling arbitration. Harnes is therefore entitled to an award of attorney fees incurred in compelling arbitration. The Court finds 16.9 hours of attorney time prior to March 20, 2006 to be appropriately attributable to compelling arbitration.

Costs of the depositions were incurred prior to the entry of the Order Compelling Arbitration. The depositions were all noticed up by Grease Spot. The depositions were therefore taken at Grease Spot's initiative at a stage of the civil litigation when Grease Spot was resisting arbitration and requesting a trial. No issue is raised as to double recovery, so apparently the arbitrator did not award these costs as "incurred in the conduct of the arbitration" as would be allowed by Section 7-910, Idaho Code. In these circumstances, the Court finds the deposition costs are awardable as a matter of right as charges for depositions taken "in preparation for trial", pursuant to Rule 54(b), I. R. C. P.

Because of the Judgment entered dismissing the Complaint of the Grease Spot on the merits, the Court holds that the Judgment entered herein is not inconsistent with its findings that Harnes prevailed on the issue of compelling arbitration. The Court expresses no opinion as to whether Harnes would be entitled to fees and costs if the Grease Spot had obtained a money judgment against Harnes pursuant to arbitration award confirmation proceedings. It may very well be that the ultimate resolution on the merits by the arbitrator should be irrelevant, but this is not an issue this Court needs to decide.

The Court awards \$3,338.00 in attorney fees to Harnes as the prevailing party on the issue of compelling arbitration. The costs claimed as a matter of right for court costs and depositions are awarded to Harnes, because the costs were incurred in the civil litigation prior to the Order Compelling Arbitration, and Harnes obtained a judgment dismissing the civil complaint of the Grease Spot on the merits.

DATED this 22 day of January, 2008.



Charles W. Hosack, District Judge

Clerk's Certificate of Mailing

I hereby certify that on the 22 day of January, 2008, that a true and correct copy of the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand Delivered or Faxed to:

Fax Plaintiff Attorney Michael Hague (fax: 208-664-6338)

Fax Defense Attorney Michael Ramsden (fax: 208-664-5884)

DANIEL J. ENGLISH
CLERK OF THE DISTRICT COURT

BY: Swain
Deputy Clerk

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED.

2008 MAR 27 AM 11:21

CLERK DISTRICT COURT
Justice Paul
DEPUTY

1
2 Joel P. Hazel, ISB No. 4980
3 WITHERSPOON, KELLEY,
4 DAVENPORT & TOOLE, P.S.
5 The Spokesman Review Building
608 Northwest Blvd., Suite 401
6 Coeur d'Alene, Idaho 83814-2146
Telephone: (208) 667-4000
Facsimile: (208) 667-8470

7 Attorneys for Defendant, Baker Commodities, Inc.

8 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
9 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

10 THE GREASE SPOT, INC.,
11 Plaintiff,

Case No. CV-05-5010

ORDER OF DISMISSAL WITH PREJUDICE

12 vs.

13 RICHARD and SHERRY HARNES, husband
14 and wife, and BAKER COMMODITIES, INC.,
15 a Delaware Corporation, and JOHN DOES 1-

16 Defendants.

17
18
19 The Court, having reviewed the parties Stipulation for Dismissal With Prejudice, and good cause
20 appearing therefor;

21 It is hereby ORDERED, ADJUDGED AND DECREED, that all remaining claims in this action
22 against Baker Commodities, Inc., are dismissed with prejudice. No party is awarded attorney's fees or
23 costs in this matter.

24 DATED this 25 day of March, 2008.

25
26 *Charles Hosack*

27 Charles Hosack
28 District Court Judge

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 27 day of MARCH, 2008, I caused a true and correct copy of the foregoing ORDER OF DISMISSAL WITH PREJUDICE to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Michael B. Hague
Paine, Hamblen, Coffin, Brooke,
& Miller, LLP
701 Front Street, Suite 101
P.O. Box E
Coeur d'Alene, Idaho 83816

2nd
Fax 5-908
1:55

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile: (208) 664-6883

Joel P. Hazel
Witherspoon, Kelley, Davenport
& Toole, P.S.
The Spokesman Review Building
608 Northwest Boulevard, Suite 401
Coeur d'Alene, ID 83814-2146

U.S. Mail
 Hand Delivered
 Overnight Mail
 Facsimile: (208) 667-8470

1122

DANIEL J. ENGLISH



Clerk

MICHAEL E. RAMSDEN, ISB #2368
RAMSDEN & LYONS, LLP
618 North 4th Street
P.O. Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: (208) 664-5818
Facsimile: (208) 664-5884

Attorneys for Defendants/Appellants Harnes

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2008 MAY -8 PM 2: 03

CLERK DISTRICT COURT

Cathy Victoria
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff/Respondent,

vs.

RICHARD and SHERRY HARNES,
husband and wife,

Defendants/Appellants,

and BAKER COMMODITIES, INC., a
Delaware Corporation, and JOHN DOES
1-10,

Defendants.

Case No. CV-05-5010

NOTICE OF APPEAL

Fee Category: T

Fee: \$101.00

TO: THE ABOVE-NAMED RESPONDENT, THE GREASE SPOT, INC., AND ITS
ATTORNEYS, AND

THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS GIVEN THAT:

1. The above-named Appellants, RICHARD and SHERRY HARNES, appeal
against the above-named Respondent THE GREASE SPOT, INC. to the Idaho Supreme

Court from the Memorandum Decision and Order entered January 22, 2008, the Honorable Charles W. Hosack, District Judge, presiding (the Order).

2. The Appellants have the right to appeal to the Idaho Supreme Court, and the Order described in Paragraph 1 above is appealable under and pursuant to Rule 11 I.A.R, as the Order became final with the entry of the Order of Dismissal with Prejudice entered March 27, 2008.

3. Preliminary statement of issues on appeal.

(A) The trial court erred in denying the appellants' motion for attorney fees incurred in arbitration between appellants and respondent.

(B) The trial court erred in denying the appellants' motion for attorney fees incurred in confirming the arbitration award.

(C) The trial court erred in denying in part appellants' motion for attorney fees incurred in the litigation prior to the trial court's order compelling arbitration, as the appellants ultimately were the prevailing party in arbitration, the award for which was confirmed and entered on October 1, 2007.

4. The appellants request a transcript of the proceedings of the trial court of December 6, 2007.

5. The Appellants request that the following documents be included in the clerk's record in addition to those automatically included under I.A.R. 28: Order Compelling Arbitration and Staying Litigation, entered March 20, 2006; Defendants Harnes' Motion to Confirm Arbitration Award and for Entry of Judgment, served July 16, 2007; Order Granting Defendants Harnes' Motion to Confirm Arbitration Award and for Entry of Judgment, entered October 1, 2007; Judgment on Arbitration Award, entered October 1, 2007; Memorandum of

Costs and Application for Attorney Fees, Including Affidavit of Counsel, filed October 11, 2007; Objection and Motion to Disallow Defendants Harnes' Motion of Costs and Application for Attorney Fees Including Affidavit of Counsel, served October 25, 2007; Memorandum in Opposition to Defendant Harnes' Application for Attorney Fees and Costs, served November 21, 2007; Memorandum Decision and Order entered January 22, 2008; Order of Dismissal With Prejudice, entered March 27, 2008.

6. I certify:
- a. That a copy of this Notice of Appeal has been served on the reporter;
 - b. That the estimated fee for the preparation of the reporter's transcript has been paid.
 - c. That the estimated fee for the preparation of the clerk's record has been paid;
 - d. That the Appellants' filing fee has been paid; and
 - e. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 8 day of May, 2008.

RAMSDEN & LYONS, LLP

By 

Michael E. Ramsden, Of the Firm
Attorneys for Defendants/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of May, 2008, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael Hague
Paine, Hamblen, Coffin, Brooke & Miller, LLP
PO Box E
Coeur d'Alene, ID 83816

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile (208) 664-6338

Joel P. Hazel
Witherspoon Kelly Davenport & Toole, PS
608 Northwest Blvd., Ste. 401
Coeur d'Alene, ID 83814-2146

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile (208) 667-8470



Michael E. Ramsden

MICHAEL E. RAMSDEN, ISB #2368
RAMSDEN & LYONS, LLP
618 North 4th Street
P.O. Box 1336
Coeur d'Alene, ID 83816-1336
Telephone: (208) 664-5818
Facsimile: (208) 664-5884

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2008 JUN -4 AM 9:44

CLERK DISTRICT COURT
Joanna Barker
DEPUTY

Attorneys for Defendants/Appellants Harnes

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC.,

Plaintiff/Respondent,

vs.

RICHARD and SHERRY HARNES,
husband and wife,

Defendants/Appellants,

and BAKER COMMODITIES, INC., a
Delaware Corporation, and JOHN DOES
1-10,

Defendants.

Case No. CV-05-5010

AMENDED NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, THE GREASE SPOT, INC., AND ITS
ATTORNEYS, AND

THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS GIVEN THAT:

1. The above-named Appellants, RICHARD and SHERRY HARNES, appeal
against the above-named Respondent THE GREASE SPOT, INC. to the Idaho Supreme

Court from the Memorandum Decision and Order entered January 22, 2008, the Honorable Charles W. Hosack, District Judge, presiding (the Order).

2. The Appellants have the right to appeal to the Idaho Supreme Court, and the Order described in Paragraph 1 above is appealable under and pursuant to Rule 11 I.A.R, as the Order became final with the entry of the Order of Dismissal with Prejudice entered March 27, 2008.

3. Preliminary statement of issues on appeal.

(A) The trial court erred in denying the appellants' motion for attorney fees incurred in arbitration between appellants and respondent.

(B) The trial court erred in denying the appellants' motion for attorney fees incurred in confirming the arbitration award.

(C) The trial court erred in denying in part appellants' motion for attorney fees incurred in the litigation prior to the trial court's order compelling arbitration, as the appellants ultimately were the prevailing party in arbitration, the award for which was confirmed and entered on October 1, 2007.

4. The appellants request a transcript of the proceedings of the trial court of December 6, 2007.

5. The Appellants request that the following documents be included in the clerk's record in addition to those automatically included under I.A.R. 28: Order Compelling Arbitration and Staying Litigation, entered March 20, 2006; Defendants Harnes' Motion to Confirm Arbitration Award and for Entry of Judgment, served July 16, 2007; Order Granting Defendants Harnes' Motion to Confirm Arbitration Award and for Entry of Judgment, entered October 1, 2007; Judgment on Arbitration Award, entered October 1, 2007; Memorandum of

Costs and Application for Attorney Fees, Including Affidavit of Counsel, filed October 11, 2007; Objection and Motion to Disallow Defendants Harnes' Motion of Costs and Application for Attorney Fees Including Affidavit of Counsel, served October 25, 2007; Memorandum in Opposition to Defendant Harnes' Application for Attorney Fees and Costs, served November 21, 2007; Memorandum Decision and Order entered January 22, 2008; Order of Dismissal With Prejudice, entered March 27, 2008.

6. I certify:
- a. That a copy of this Amended Notice of Appeal has been served on Keri Veare, Coeur d'Alene Reporting;
 - b. That the estimated fee for the preparation of the reporter's transcript has been paid.
 - c. That the estimated fee for the preparation of the clerk's record has been paid;
 - d. That the Appellants' filing fee has been paid; and
 - e. That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 3 day of June, 2008.

RAMSDEN & LYONS, LLP

By 

Michael E. Ramsden, Of the Firm
Attorneys for Defendants/Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of June, 2008, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Michael Hague
Paine, Hamblen, Coffin, Brooke & Miller, LLP
PO Box E
Coeur d'Alene, ID 83816

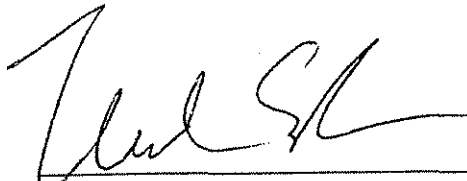
US Mail
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 Facsimile (208) 664-6338

Joel P. Hazel
Witherspoon Kelly Davenport & Toole, PS
608 Northwest Blvd., Ste. 401
Coeur d'Alene, ID 83814-2146

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile (208) 667-8470

Keri Veare
Coeur d'Alene Reporting
212 North Ironwood Drive, Suite D
PMB #312
Coeur d'Alene, ID 83814

US Mail
 Overnight Mail
 Hand Delivered
 Facsimile (208) 667-7435



Michael E. Ramsden

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC., an Idaho Corporation)
)
) Petitioner/Respondent,)
)
 vs.)
)
) RICHARD and SHERRY HARNES, husband)
) and wife,)
)
) Defendants/Appellants,)
)
) BAKER COMMODITIES INC., a Delaware)
) Corporation, and JOHN DOES 1-10,)
)
) Defendants.)
)

**CERTIFICATE OF
EXHIBITS**

CASE # CV-00-5967

SUPREME COURT
#35321

I, DANIEL J. ENGLISH, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

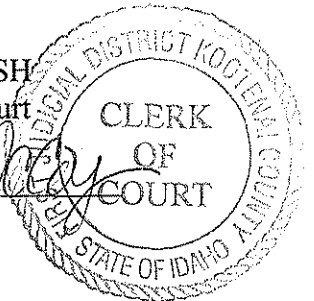
I FURTHER CERTIFY that the following documents will be submitted as exhibits to the Record:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 9 day of July, 2008

DANIEL J. ENGLISH
Clerk of District Court

By: [Signature]



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

THE GREASE SPOT, INC., an Idaho Corporation,)	
)	
Plaintiff/Respondent,	)	CASE NO. CV 05-5010
)	
vs.	)	SUPREME COURT DOCKET
	)	NO. 35321
RICHARD and SHERRY HARNES, husband and wife,)	
)	
Defendants/Appellants,	)	CLERK'S CERTIFICATE
)	
and)	
)	
BAKER COMMODITIES INC., a Delaware Corporation, and JOHN DOES 1-10,)	
)	
Defendants.)	
<hr/>		

I, Daniel J. English, Clerk of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct Record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I certify that the Attorneys for the Appellants and Respondents were notified that the Clerk's Record and Reporter's Transcript were complete and ready to be picked up, or if the

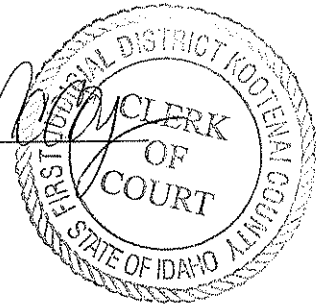
attorney is out of town, the copies were mailed by U.S. mail, postage prepaid, on the _____ day of _____, 2008.

I do further certify that the Clerk's Record and Reporter's Transcript will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho this 9 day of July, 2008.

DANIEL J. ENGLISH
Clerk of District Court

By: Susan M. [Signature]
Deputy



IN THE SUPREME COURT FOR THE STATE OF IDAHO

THE GREASE SPOT, INC., an Idaho Corporation,)	
	)	CIVIL CASE NO.
Plaintiff/Respondent,	)	CV 05-5010
)	
vs.	)	SUPREME COURT DOCKET
	)	NO. 35321
RICHARD and SHERRY HARNES, husband)	
and wife,)	
)	
Defendants/Appellants,)	
)	
and)	
)	
BAKER COMMODITIES INC., a Delaware)	
Corporation, and JOHN DOES 1-10,)	
)	
Defendants.)	
<hr/>		

CLERK'S CERTIFICATE OF SERVICE

I, Daniel J. English of District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and the Reporter's Transcript to each of the Attorneys of Record in this cause as follows:

Attorney for Appellants

MICHAEL E. RAMSDEN
ISB # 3574
PO Box 1336
Coeur d'Alene, ID 83816

Attorney for Respondents

MICHAEL HAGUE
ISB # 6591
P.O. Box E
Coeur d'Alene, ID 83816

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Kootenai, Idaho 9 day of July, 2008.

DANIEL J. ENGLISH
Clerk of the District Court

By: Susan M. [Signature]

