

U.S. COURTS

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InterDent Service Corporation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation,

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Defendant.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Third-Party Plaintiff,

v.

POCATELLO DENTAL GROUP, P.C., an

Case No. CV-03-450-E-LMB

REPLY AFFIDAVIT OF SCOTT J.
KAPLAN IN SUPPORT OF
DEFENDANT/THIRD-PARTY
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
(Misner Noncompete)

REPLY AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-
PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER
NONCOMPETE) - 1

PortInd3-1485468.1 0021164-00081

ORIGINAL

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Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY R. MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Third-Party Defendants.

STATE OF OREGON)
) ss.
County of Multnomah)

1. I am one of the attorneys representing defendant, third-party plaintiff and counterclaimant InterDent Service Corporation ("ISC") in this matter. I am admitted to practice in this Court pro hac vice. The facts in this affidavit are based on my personal knowledge.

2. Attached here as Exhibit 1 are cited excerpts of the deposition of Gregory E. Romriell taken in this action on June 25, 2003.

3. Attached hereto as Exhibit 2 are cited excerpts of the deposition of Larry W. Bybee taken in this action on June 25, 2003.

4. Dr. Bybee testified in his deposition that his and third-party defendant Miner's new practice, Kidds Dental, is managed by Orthodontic Centers of America, a corporation based

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REPLY AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER NONCOMPETE) - 2

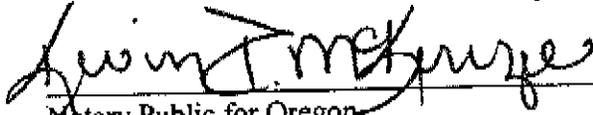
in Louisiana. In an on-line search of Idaho business filings, I found no record of Orthodontic Centers of America. However, I did find Orthodontic Centers of Idaho that is a Delaware corporation based in Louisiana. Attached as Exhibit 3 is the Idaho Secretary of State printout for Orthodontic Centers of Idaho.



Scott J. Kaplan

SUBSCRIBED AND SWORN to before me this 28th day of June, 2004.





Notary Public for Oregon
~~MY COMMISSION EXPIRES: 4-8-2008~~

REPLY AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER NONCOMPETE) - 3

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C.,)
an Idaho professional)
corporation,)

Plaintiff,)

vs.)

Case No. CV-03-450-E-LMB

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)

Defendant.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)

Third Party Plaintiff.)

vs.)

POCATELLO DENTAL GROUP, P.C,)
an Idaho professional)
corporation; DWIGHT G.)
ROMRIELL, individually;)
LARRY R. MISNER, JR.,)
individually; PORTER SUTTON,)
individually; ERNEST SUTTON,)
individually; GREGORY ROMRIELL)
individually; ERROL ORMOND,)
individually; and ARNOLD)
GOODLIPFE, individually,)

Third Party Defendants.)

ORAL DEPOSITION OF GREGORY E. ROMRIELL
Taken on June 25, 2004

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1 A. Yes.

2 Q. And when you took over his position, did you

3 go back and look at any of the correspondence he had?

4 A. No.

5 Q. Look at Exhibit No. 2, which appears to be a

6 letter on Pocatello Dental Group letterhead by Dr.

7 Misner, and let me know if you have ever seen it before.

8 A. I haven't.

9 Q. Let me ask you something. In the third

10 paragraph Dr. Misner states, "It is my understanding that

11 the term of Dwight's employment is governed by Articles

12 III and IV of the Dentist's Employment Agreement.

13 InterDent is not a party to that agreement and has no

14 independent right to enforce that."

15 MR. HEARN: Objection, my copy actually says

16 III and VI.

17 MR. KAPLAN: I am sorry, I read it wrong,

18 Articles III and VI. That's the problem with Roman

19 numerals.

20 Q. With that correction, Dr. Romriell, do you

21 know whether or not Dr. Misner was correct here?

22 A. No, I don't.

23 Q. Do you recognize the letterhead on this

24 document at all?

25 A. It says Pocatello Dental Group. That looks

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1 Johnson. A new young guy.

2 Q. Is that business known as Dentistry For Kids?

3 A. It may be.

4 Q. Are you familiar with that office?

5 A. I have never been in it.

6 Q. Is it at 625 Alameda?

7 A. That's probably him. I know he is on Alameda.

8 I have never been in his office. What's the name of the

9 dentist?

10 Q. I couldn't tell you. I am looking at the

11 Yellow Pages here and it doesn't say.

12 A. If I heard his name, I could tell you.

13 Q. Just for the record, I am looking at the Qwest

14 Dex Yellow Pages. Are you familiar with Dr. Tad E.

15 Hancock, D.D.S.?

16 A. Yes.

17 Q. Is Dr. Hancock a family dentist?

18 A. He is a general dentist. I don't know if he

19 is a family dentist or not. He is a young guy.

20 Q. Do you know if he takes Medicare-Medicaid?

21 A. I don't.

22 Q. Do you know J. Brent Berrey, D.M.D.?

23 A. Yes.

24 Q. Is Dr. Berrey a family dentist?

25 A. Yes.

Page 23

1 familiar.

2 Q. It looks like the letterhead that Pocatello

3 Dental Group uses?

4 A. We have several.

5 Q. This is one of them?

6 A. It could be. Our letterhead is a specific

7 color and --

8 Q. It's a copy.

9 A. Yes. So I don't know.

10 Q. Looking at the second page, do you recognize

11 Dr. Misner's signature?

12 A. Yes.

13 Q. Let's talk about family dentists for a moment.

14 Now, it's true, is it not, that Dr. Misner and Dr. Bybee

15 are not the only dentists in Pocatello who see children,

16 right?

17 A. True. But they are nearly the only dentists

18 in Pocatello that see the Medicaid-Medicare patients.

19 Most, I don't know of another general dentist that sees

20 them, and the other pediatric dentist has refused to see

21 them when we have referred them to his office.

22 Q. Who is that?

23 A. I don't remember his name.

24 MR. HAWKES: Where is his office?

25 THE WITNESS: On Alameda Road. He is with D

Page 25

1 Q. Does Dr. Berrey take Medicare-Medicaid?

2 A. When I visited with him a year, ago he wasn't

3 taking any.

4 Q. So your latest knowledge is about a year ago

5 on that?

6 A. Yes. He was taking very few children, period.

7 Q. Bringhurst Family Dentistry, are you familiar

8 with them?

9 A. Yes.

10 Q. And they see children?

11 A. Yes.

12 Q. Does Bringhurst Family Dentistry take

13 Medicare-Medicaid?

14 A. I don't know.

15 Q. Are you familiar with Robert L. Fackrell,

16 F-A-C-K-R-E-L-L?

17 A. Yes.

18 Q. And is Dr. Fackrell a family dentist?

19 A. Yes. He is also the prison dentist.

20 Q. Does he take Medicare-Medicaid?

21 A. I don't know.

22 Q. Are you familiar with William Godfrey and Lee

23 Reddish?

24 A. Yes.

25 Q. And do they have an office that practices

1 family dentistry?
2 A. Yes.
3 Q. Do they take Medicare-Medicaid?
4 A. Bill doesn't. I don't know about Lee.
5 Q. Are you familiar with Gene Hoge?
6 A. Yes.
7 Q. Is he a family dentist?
8 A. Yes.
9 Q. Does he take Medicare-Medicaid?
10 A. No.
11 Q. Are you familiar with Larry Kemp?
12 A. Yes.
13 Q. Is he a family dentist?
14 A. Yes.
15 Q. Does he take Medicare-Medicaid?
16 A. I don't know.
17 Q. Are you familiar with Kim Smith?
18 A. Yes.
19 Q. Is that a he or she?
20 A. He.
21 Q. Is he a family dentist?
22 A. Yes.
23 Q. Does he take Medicare-Medicaid?
24 A. I don't know.
25 Q. Are you familiar with Larry Kemp?

1 are you familiar with that office?
2 A. Yes.
3 Q. And do they take Medicare-Medicaid?
4 A. They may.
5 Q. Are all the dentists that we just named in the
6 Pocatello area?
7 A. Yes. In fact when Dr. Misner had resigned
8 from the Pocatello Dental Group, we were concerned about
9 the emergency service to those patients. We did not have
10 the capability of working them into our schedule on the
11 basis that they had been coming in. We asked Dr. Misner
12 and Bybee if they would come in on an emergency basis and
13 see these patients. We made that request of InterDent
14 and received a rather terse letter back, absolutely not,
15 that they would be -- all those patients should be
16 referred out to the dentists in the community.
17 When we referred those children into the
18 community, who had dental emergencies, which means the
19 were in pain, they could not get into another dentist for
20 the most part. So Dr. Bybee made arrangements to go in
21 after hours at his brother's office so that he could take
22 care of those emergency patients and get them out of
23 pain, because they were not able to find all their needs
24 met among the list that you just read.
25 Q. Let me ask you a few questions about what you

1 A. You asked that.
2 Q. I am sorry.
3 MR. HAWKES: Well, are you still familiar.
4 Q. Are you still familiar?
5 A. Yes.
6 Q. Does he still practice family dentist?
7 A. My answer is that Larry will take anybody he
8 can get in the door.
9 Q. Are you familiar with an office called
10 Pocatello Family Dentistry?
11 A. No.
12 Q. Is there an office staffed by residents in the
13 ISU advanced general dentistry program here?
14 A. It's a residency program for recent graduates.
15 Q. And do they see children?
16 A. On rare occasion.
17 Q. Do they take Medicare-Medicaid?
18 A. I have no idea.
19 Q. Are you familiar with Larsen Dental Center?
20 A. Yes.
21 Q. And are they family dentists?
22 A. I'm not sure.
23 Q. Do they take Medicare-Medicaid?
24 A. I have no idea.
25 Q. And our last one is Williams Family Dentistry,

1 just said.
2 Did your request that Drs. Misner and Bybee
3 see emergency patients at Pocatello Dental, was that made
4 in writing?
5 A. Yes. The answer was in writing, too.
6 Q. And was it a letter of some sort?
7 A. It was to Dr. Aaron.
8 Q. You got a letter from Dr. Aaron back. Did you
9 communicate to InterDent in a letter as well?
10 A. In response to their letter when they told me
11 no?
12 Q. No, requesting that Drs. Misner and Bybee see
13 emergency patients.
14 A. Yes.
15 Q. Do you recall when this occurred?
16 A. March -- February.
17 Q. And how many patients has it been that have
18 been unable to get in to see another dentist, do you have
19 an estimate?
20 A. It could be 22 million, I have no idea.
21 That's an absurd number but I have no idea. We have
22 multiple receptionists taking the calls and that's some
23 of the information that InterDent refuses to give to me.
24 I have asked for an accounting of new patients, calls and
25 referrals and so forth, and they will not share that

1 information with me.
2 Q. You have told me that you believe that some
3 emergency patients have been unable to get treatment.
4 Why do you believe that?
5 A. Because they have contacted me personally.
6 Q. How many people have contacted you personally?
7 A. Oh, probably 20.
8 Q. So these are 20 parents of children who have
9 contacted you?
10 A. Yes. You don't find very many children
11 calling.
12 MR. KAPLAN: Did you ever sign the protective
13 order, Lowell?
14 MR. HAWKES: No, I have problems with it. I
15 would be glad to discuss it if we have time.
16 MR. KAPLAN: The problem is I want to know the
17 names of these children, but absent the protective
18 order --
19 A. With or without one, I don't think I would
20 remember.
21 Q. That would solve the problem. As you sit here
22 today, you don't remember the names?
23 A. No, they were all telephone conversations. I
24 apologized for my inability to take care of them. I feel
25 badly for them. I'm not trained for those special needs.

1 A. What's that street? Hilina.
2 Q. In Pocatello?
3 A. In Pocatello.
4 Q. What is his brother's name?
5 A. Darryl.
6 Q. Now, prior to the GMS dental acquisition, you
7 had a dentist working with you, a Dr. Nicholson; is that
8 right?
9 A. Nicholson? No.
10 Q. Does that ring a bell?
11 A. No, we never had a doctor by that name.
12 Q. Did you have orthodontic specialists work with
13 you prior to the GMS acquisition?
14 A. Yes, Dr. Eric Johnson.
15 Q. Any others?
16 A. A Dr. Dennis Michaelson had been with us
17 before. He left the group and made arrangements for Dr.
18 Johnson to join us.
19 Q. When did that occur?
20 A. It's over ten years ago, I couldn't tell you
21 the time period.
22 Q. So either in the eighties or early nineties,
23 is that fair?
24 A. Yes; probably in the nineties. I am
25 speculating. I am doing good to remember when my kids

1 Q. And the person who ended up treating them was
2 Dr. Bybee; is that right?
3 A. Those particular patients, yes, because I
4 referred them to him and I am sure he took care of them.
5 Q. And Dr. Bybee is a general dentist who sees
6 children?
7 A. Yes. He has taken many hours of continuing ed
8 classes and studying; he is as well trained as any
9 pediatric specialist dentist. The only difference is he
10 has not gone to a specialty school. The fact of the
11 matter is he is better trained and treats the patients
12 better than the other specialist in Pocatello.
13 Q. Who is the other specialist?
14 A. The other pediatric specialist.
15 Q. Who is that?
16 A. One of the kids' dentists. You couldn't tell
17 me his name.
18 Q. Do you remember his name?
19 A. I don't. Hand me the phone book and I'll tell
20 you what it is.
21 Q. Maybe we can do that during a break.
22 A. The new guy in town.
23 Q. The new guy in town is the other --
24 A. The other pediatric dentist.
25 Q. Where is Dr. Bybee's brother's office?

1 were born.
2 Q. Sometimes people come into depositions with a
3 cheat sheet of when they went to high school and that
4 kind of thing. So you are doing well.
5 Did Dr. Michaelson have a noncompete agreement
6 with Pocatello Dental?
7 A. I don't remember.
8 Q. Do you recall that Pocatello Dental took steps
9 to enforce a noncompete agreement against Dr. Michaelson?
10 A. No.
11 Q. When Dr. Michaelson left Pocatello Dental,
12 where did he go to practice?
13 A. He went to Burley.
14 Q. How far is from Burley from Pocatello,
15 approximately?
16 A. Oh, 90 miles, 60 miles.
17 Q. How long did he stay in Burley?
18 A. The reason he went to Burley was because he
19 was having problems with his children and the law, and he
20 had several teenage children who needed to have a
21 different circle of friends; and he had already been
22 practicing in Burley for a number of years.
23 Q. How long did he practice in Burley, do you
24 know?
25 A. He has probably been there 20 years.

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1 Q. He is still there.
2 A. Yes.
3 Q. And for two years after he left Pocatello
4 Dental, did he practice at all in Pocatello?
5 A. I have no idea. I only referred one
6 orthodontist in the group, and at that time it was Dr.
7 Johnson.
8 Q. Prior to the GMS Dental acquisition, you did
9 in fact have noncompete agreements in your employment
10 contracts, correct?
11 A. I think we did.
12 Q. And in fact those noncompete agreements had a
13 20-mile and two-year limitation, right?
14 A. Yes, they may have.
15 Q. That's your best recollection?
16 A. Yes. It's been 20 years since we wrote that.
17 Q. So your best recollection is that the 20-mile
18 and two-year limitation is not something that GMS Dental
19 came up with, it's something that you had already been
20 using, correct?
21 A. Well, yeah, maybe.
22 Q. Your best recollection?
23 A. Best recollection.
24 Q. Who are the current shareholders in Pocatello
25 Dental Group?

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1 A. Myself, Dwight Romriell, Jay Goodliffe, Errol
2 Ormond.
3 Q. Dr. Misner was a --
4 A. Let's see, and Russ Misner, five of us.
5 Q. Dr. Misner is still a shareholder?
6 A. Yes.
7 Q. Has Dr. Bybee ever been a shareholder?
8 A. No.
9 Q. Is Dr. Earnest Sutton a shareholder?
10 A. No.
11 Q. Is he an employee of yours?
12 A. Yes.
13 Q. Has he ever been a shareholder?
14 A. Yes.
15 Q. What happened to his shares?
16 A. He resigned from the PC.
17 Q. And did he sell his shares to anybody or what
18 happened?
19 A. He just gave them back to the rest of us.
20 Q. And do you as individuals own his shares or
21 does the company own them?
22 A. Individuals.
23 Q. How are they divided up?
24 A. Evenly.
25 Q. And Dr. David Porter Sutton, was he a

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1 shareholder at one point?
2 A. Yes.
3 Q. Is he no longer a shareholder?
4 A. Right.
5 Q. What happened to his shares?
6 A. They were given to members of the crew.
7 Q. Same arrangement?
8 A. Same arrangement. Dr. Porter Sutton was the
9 founder of the Pocatello Dental Group.
10 Q. And he was the president of the group for a
11 long period of time?
12 A. Many years.
13 Q. He was the president of the group at the time
14 of the GMS Dental acquisition?
15 A. Yes.
16 Q. And did he serve as president for a number of
17 years after that?
18 A. Yes.
19 Q. When did he stop serving as president?
20 A. I couldn't tell you.
21 Q. Did Dr. Misner take over after him?
22 A. I don't remember who the next president was.
23 Q. Dr. Misner was the president prior to you?
24 A. Yes.
25 Q. And do you recall how long he had been

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1 president?
2 A. No, just not long enough.
3 Q. Now, how is it that you came to be president
4 in place of Dr. Misner?
5 A. He was about ready to have a nervous
6 breakdown, his blood pressure was out of control, and the
7 doctor told him he needed to get out of the position.
8 Our employer was creating -- not our employer, but
9 InterDent was creating a lot of stresses in his life.
10 Q. So in order to reduce Dr. Misner's stress, you
11 took over, is that right?
12 A. Yes.
13 Q. And --
14 A. With friendly coercion.
15 Q. When did that happen?
16 A. I'm not even sure of the date.
17 Q. Was it in 2003 or 2004?
18 A. It was at the end of 2003 or the beginning of
19 2004. I'd have to go back and look at the records.
20 MR. KAPLAN: Let's have this marked.
21 (Deposition Exhibit No. 3 marked for
22 identification.)
23 Q. Do you recognize Exhibit No. 3, Dr. Romriell?
24 A. I think I have seen this before.
25 Q. Are these the bylaws of the Pocatello Dental

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1 Group?
 2 A. Yes, that's what it says.
 3 Q. Do you have any reason to doubt that?
 4 A. I'd have to take and compare it with my copy
 5 to make sure it's the same.
 6 Q. Well, I'll represent to you that these were
 7 produced by Mr. Kerl's office --
 8 A. Then it's probably accurate.
 9 Q. Looking at Section 1, do you see there is a
 10 discussion of annual meeting of shareholders the second
 11 Monday in the month of February of each year?
 12 A. Yes.
 13 Q. Did that meeting occur in this year?
 14 A. Yes.
 15 Q. Are there minutes of that meeting?
 16 A. Yes.
 17 Q. Do you have a copy of those?
 18 A. I do; I think I still have them.
 19 Q. Would you be willing to provide that to us?
 20 A. Could I talk to my counsel about that?
 21 Q. Sure.
 22 MR. HAWKES: It would be my position it's not
 23 appropriate for you to make any request of my client. If
 24 you want to make a request to me, I'll address it.
 25 Q. What were the subjects that were discussed at

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1 dentist is still at the group. I had lost approximately
 2 25 percent of my previous year's production.
 3 Q. And is it your testimony that the loss of
 4 patients has nothing at all to do with dentists leaving?
 5 A. No.
 6 Q. Part of that loss has to do with dentists
 7 leaving, correct?
 8 A. Absolutely not. My production is actually
 9 enhanced by another doctor leaving.
 10 Q. So then it's your view that patients don't
 11 follow dentists, they stick to the office?
 12 A. There will be a percentage that will stay.
 13 The doctor that you are referring to is Dr. Porter
 14 Sutton. He was the only one that left the group. He
 15 chose to create an office in Downey, Idaho, 20 miles
 16 away. And most of his patients live here in Pocatello.
 17 He took approximately 50 percent of his patients with
 18 him, and we retained about 10 percent of them in the
 19 Pocatello Dental Group. And the other 40 percent went
 20 into the community.
 21 And at our dental meetings, which we would
 22 meet with the Southeast Idaho Dental Society, the typical
 23 discussion was we are grateful for the Pocatello Dental
 24 Group because they are the best marketing arm we have for
 25 our practices. Because our patients are well trained

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1 that annual meeting?
 2 A. My recollection would be based upon our recent
 3 history with InterDent, that the InterDent dilemma would
 4 be the main subject of discussion, our lack of supplies,
 5 our loss of practice share, our poor state of training
 6 for our staff, the disrepair of our equipment, the
 7 inability of InterDent to do marketing within our
 8 practice, InterDent's inability to share with us the
 9 practice numbers that we need to know to evaluate our
 10 practice.
 11 Q. Let's talk about loss of practice share. Now,
 12 you have had dentists leave over the past year or two,
 13 correct?
 14 A. Yes, for the same reasons.
 15 Q. And part of your loss of practice share is
 16 dentists leaving, correct?
 17 A. No. I am talking about amount of practice
 18 share per doctor, and with doctors leaving the group,
 19 there are certain patients that stay with the group, so
 20 our numbers should be greater because of that.
 21 Q. So you weren't talking about market share, you
 22 were talking about --
 23 A. I am talking about market share, I am talking
 24 about the loss of patients from the Pocatello Dental
 25 Group to other dental offices in the community, when the

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1 patients when they go to these other offices to be a
 2 patient. And the reason they were leaving our office is
 3 because of the way that they had been treated by the
 4 Vancouver office of InterDent.
 5 Q. What do you mean by that? How were patients
 6 treated?
 7 A. By the high-handed, blood sucking,
 8 money-grabbing tactics which they used to collect the
 9 bills from the patients.
 10 Q. So taking out the adjectives, it's the
 11 collection practices that you think upset patients?
 12 A. That's being very kind, yes.
 13 Q. Any other reasons why you feel --
 14 A. None.
 15 Q. Let me finish the sentence first.
 16 Any other reasons why you feel that InterDent
 17 is responsible for these patients leaving?
 18 A. I know of and have been given no other reason.
 19 I have had patients that I have seen at wedding
 20 receptions and family gatherings that have come to me and
 21 put their arm around me and say, Dr. Romriell, we love
 22 you, you are the finest dentist we have ever had, but we
 23 cannot tolerate the way we have been treated by
 24 InterDent.
 25 Q. And can you give me some numbers of --

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1 A. No.
2 Q. Is there a secretary?
3 A. Yes.
4 Q. Who is that?
5 A. Dr. Ormond.
6 Q. Is there a treasurer?
7 A. He is the secretary-treasurer.
8 MR. KAPLAN: Let's take a short break.
9 (Short recess.)
10 Q. Dr. Romriell, you have been practicing in
11 Pocatello for approximately 30 years now; is that right?
12 A. Yes, 29.
13 Q. And are you familiar with the community of
14 dental practitioners here?
15 A. Yes.
16 Q. Are you involved in any local dentistry
17 organizations?
18 A. Yes.
19 Q. What are those?
20 A. The free neighborhood clinic, indigent, take
21 care of patients here in Pocatello.
22 Q. Is there something like a Pocatello dental
23 association --
24 A. Oh, societies, yes, there is a Southeast Idaho
25 Dental Society. I was the founder of that organization.

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1 I was several times the president of the Pocatello Dental
2 Society. I was the president of the Upper Snake River
3 Dental Society.
4 Q. In the break did you have a chance to review
5 my copy of the Yellow Pages --
6 A. There is not all the pages there. I didn't
7 see it.
8 Q. It didn't help you recollect the name of the
9 new guy?
10 A. No.
11 Q. When did Dr. Misner leave Pocatello Dental
12 Group?
13 A. I don't remember if it was March or April;
14 this spring.
15 Q. Before he left did he provide some sort of
16 written notice?
17 A. Yes.
18 Q. Who did he provide that notice to?
19 A. To me.
20 Q. Was it in a letter?
21 A. Yes.
22 Q. Do you still have a copy of it?
23 A. I gave the letter to Barbara. I think I have
24 a copy of it.
25 Q. Now, does Pocatello Dental Group itself have

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1 files somewhere?
2 A. Lots of files.
3 Q. Where are those files located?
4 A. I really don't know. There are some at the
5 Pocatello Dental Group; there is storage somewhere in
6 town that they have files.
7 Q. Was it Dr. Porter Sutton who took
8 responsibility at some point for putting things in
9 storage, or who did?
10 A. No, Barbara.
11 Q. Where are the Pocatello Dental Group corporate
12 records kept?
13 A. I guess they are in the file that Russ gave
14 me.
15 Q. So Dr. Misner gave you a file when you took
16 over?
17 A. Yes. I would expect that's where they would
18 be.
19 Q. Did you do anything to try to stop Dr. Misner
20 from leaving Pocatello Dental?
21 A. No.
22 Q. Why not?
23 A. For the same reasons I gave you about Dr.
24 Snow.
25 Q. Did you have a concern that Dr. Misner leaving

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1 was going to hurt your practice?
2 A. Yes.
3 Q. And did you attempt to quantify the damage to
4 the practice that his leaving was going to do?
5 A. No.
6 Q. And your concern about --
7 A. I was disappointed that he was going to leave.
8 Q. And the damage to the practice, is that in the
9 form of patients going with him?
10 A. Yes, and the attractiveness of the Pocatello
11 Dental Group itself. We became the Pocatello Dental
12 Group, the uniqueness of our office was we had a
13 pediatric dentist, the only one in town. Now we have two
14 and we don't have one in our office.
15 Q. And just to summarize, the reasons why you
16 didn't take steps to keep him from leaving were that you
17 thought that InterDent had done some things that were
18 wrong and would prevent you from doing anything to stop
19 Dr. Misner from leaving?
20 A. Yes.
21 Q. Now, did you seek legal advice on that subject
22 or is that something that you came up with on your own?
23 A. I talked with Ron Kerl, the PC's attorney.
24 Q. And so because of that, despite the damage to
25 your practice, you took no steps to enforce Dr. Misner's

1 noncompete agreement, correct?

2 MR. KERL: I object to the form of the
3 question as being vague.

4 MR. HAWKES: Would you read the question,
5 please.

6 (Record read.)

7 MR. HAWKES: If you are talking about because
8 of the conversation with Ron Kerl, I object to that as
9 inquiring into attorney-client, if that's what you
10 intended. That may not be what you intended.

11 MR. KAPLAN: I wasn't asking Dr. Romriell to
12 disclose any attorney-client communication.

13 A. What's the question again?

14 Q. Dr. Misner's leaving was going to damage your
15 practice, you knew that, right?

16 A. No, I didn't think it was going to damage my
17 practice that much, but because I am fairly busy after
18 Dwight had left, I absorbed, because of my name, I
19 absorbed many of his patients, and I am about as busy as
20 I could be. And I really didn't have the capacity,
21 rather than hurting my practice, I just didn't have the
22 capacity to take care of Dr. Misner's patients.

23 Q. So the damage would be to the Pocatello Dental
24 Group practice as a whole, not your own personal
25 practice?

1 to do with. And I think you may be talking about
2 separate things in this. So I object to the degree that
3 that's ambiguous.

4 MR. KAPLAN: Let's go on to something else.

5 Q. When did Dr. Bybee leave?

6 A. The same time Misner did, similar, close to
7 the same time.

8 Q. Did Dr. Bybee --

9 A. Actually he left before that, come to think of
10 it. Just the practice wasn't busy enough for him to be
11 there, so he had left before that, and I don't recall --
12 he was gone a couple of weeks before I became aware that
13 he wasn't seeing patients.

14 Q. Do you recall when that occurred?

15 A. I do not.

16 Q. Did he provide any sort of written notice that
17 he was leaving?

18 A. No, not at that point; he did later.

19 Q. When did he provide that notice?

20 A. When he wouldn't be back.

21 Q. Do you know when that was?

22 A. March, February.

23 Q. Was that written notice communication to you?

24 A. Yes.

25 Q. And was it a letter?

1 A. No, it wouldn't hurt the Pocatello Dental
2 Group, it would hurt InterDent. That's why I was
3 surprised that they didn't do something positive to try
4 to keep him there.

5 Q. So I am confused, then. You said that Dr.
6 Misner leaving would hurt the practice, right?

7 A. Well, if you interpret it that way, that's a
8 misstatement and I take that back. And when you say the
9 practice, what are you referring to?

10 Q. The money flowing into the Pocatello Dental
11 Group office on Pine Ridge Mall --

12 A. As a total?

13 Q. Yes.

14 A. As a total it would absolutely be devastating,
15 not to the Pocatello Dental Group but to InterDent.

16 MR. HEARN: Let me state an objection or maybe
17 even a clarification that will help, possibly help this.

18 It appears to me, Scott, that you are asking him about
19 damage to the group or InterDent having to do with Dr.
20 Misner leaving in relation to a noncompete clause, and I
21 think that may be ambiguous of whether or not you are
22 talking about because of him leaving and the effect of
23 him leaving, which the noncompete clause doesn't have
24 anything to do with, versus his competing in Pocatello
25 which the noncompete clause that you allege has something

1 A. Yes.

2 Q. Do you still have it?

3 A. I forwarded that to Barbara; I believe I have
4 a copy of it.

5 Q. Now, Dr. Bybee also has a noncompete agreement
6 with Pocatello Dental, correct?

7 A. No.

8 Q. He does not?

9 A. No.

10 Q. Dr. Bybee left to practice in Pocatello; is
11 that correct?

12 A. I am not sure why he left.

13 Q. Just the physical location where he went, is
14 that in Pocatello?

15 A. Well, he didn't leave to go practice in
16 another office; he made arrangements at our request to
17 find another office, which turned out to be his
18 brother's, to see emergency patients. I don't think he
19 was practicing anywhere other than that.

20 Q. Did at some point he open up an office in
21 Pocatello?

22 A. Yes.

23 Q. What's the name of that office?

24 A. Kidds something, Kidds Dental or -- they are
25 in the old Pocatello Mall area next to Fred Meyer.

1 Q. Does 716 Yellowstone sound right?
 2 A. It's in that neighborhood, yes. I think it's
 3 called Kidds Dental.
 4 (Deposition Exhibit No. 4 marked for
 5 identification.)
 6 Q. Let me explain to you, Dr. Romriell, what
 7 Exhibit No. 4 is. Exhibit No. 4 is a document in which
 8 we have redacted names of patients because there is not a
 9 protective order entered in this case. But they are
 10 documents entitled Request for the release of dental
 11 records. Have you seen these before?
 12 A. Never have.
 13 Q. In the course of your work at Pocatello Dental
 14 Group have you become aware that patients are requesting
 15 records to be transferred to Dr. Misner or Dr. Bybee at
 16 Kidds Dental?
 17 A. Yes. Is Kidds spelled with two D's like that?
 18 Q. It looks like Dr. Misner spells it that way.
 19 Do you know how long that's been going on, that record
 20 transfers have been going on to Dr. Misner and Bybee in
 21 Pocatello?
 22 MR. HAWKES: Objection. You haven't
 23 established that he knows anything about these documents.
 24 A. I have never seen these.
 25 Q. Without reference to the documents, do you

1 Q. And are you aware that patient records have
 2 also been transferred to Dr. Misner's practice in Burley?
 3 A. No.
 4 Q. Do you know, does Dr. Bybee also practice in
 5 Burley or does he limit his practice to Pocatello?
 6 A. I do not know.
 7 (Deposition Exhibit No. 5 marked for
 8 identification.)
 9 Q. Have you seen what we have marked as Exhibit
 10 No. 5 before?
 11 A. I'm not sure.
 12 Q. Do you have an understanding about what
 13 patients on No Recall List means?
 14 A. That's probably the 2028 list.
 15 Q. Have you ever seen a calculation of lost
 16 revenue from patients on No Recall List?
 17 A. I don't remember seeing it.
 18 Q. So is it fair to say this document, you have
 19 no recollection of this document?
 20 A. I don't remember this one specifically. Where
 21 did it come from?
 22 Q. I believe it came from something that
 23 Pocatello Dental Group filed, but if you don't remember
 24 you don't remember.
 25 A. I wonder where they come up with the 37

1 know how long --
 2 A. No.
 3 Q. Let me finish so we are clear for the record.
 4 -- how long record transfers have been made to Drs.
 5 Misner and Bybee at their office in Pocatello?
 6 A. No.
 7 Q. Does Dr. Misner also have an office in Burley?
 8 A. Yes, the same office as Dr. Michaelson.
 9 Q. And when Dr. Misner left Pocatello Dental, did
 10 he initially go to practice at that office in Burley?
 11 A. I think he was seeing patients before that.
 12 Q. In Burley?
 13 A. In Burley.
 14 Q. While he was still employed by Pocatello
 15 Dental?
 16 A. Yes.
 17 Q. Do you know how long that had been going on?
 18 A. I don't.
 19 Q. Do you have a sense of --
 20 A. And I am not even certain about that; that's
 21 just an impression that I have, because I never have
 22 talked to him about the Burley situation.
 23 Q. Do you know if Dr. Misner physically practices
 24 at the Kidds dental office in Pocatello?
 25 A. I have never seen him there.

1 percent down there at the bottom.
 2 (Deposition Exhibit No. 6 marked for
 3 identification.)
 4 Q. Dr. Romriell, have you seen what we have
 5 marked as Exhibit No. 6 before?
 6 A. No.
 7 Q. You are aware, though, that Dr. Misner had a
 8 written employment agreement with Pocatello Dental Group?
 9 A. Yes.
 10 Q. Do you know the term of that agreement?
 11 A. I do not.
 12 Q. Do you recall the term of your agreement?
 13 A. I recall it was about ten years.
 14 Q. Do you know if Dr. Misner had a different term
 15 of agreement?
 16 A. I don't.
 17 Q. Now, your brother, Dr. Dwight Romriell, did
 18 have a different term, correct?
 19 A. Yes, he had seven years.
 20 Q. Why was his term different?
 21 A. He didn't have as much faith in GMS as what I
 22 had. And that's supposition.
 23 Q. Now, turn to Page 3 of Exhibit No. 6, under
 24 Section 2.1, Hours. In the middle of the paragraph it
 25 states, "In general, provider is expected to work for

1 group a minimum of 1,080 hours per year (with a maximum
2 of four days per week)."
3 Do you know if Dr. --
4 MR. HAWKES: Just a minute here. My agreement
5 is different than his, Scott.
6 (Discussion off the record.)
7 A. Okay, I am on Page 3.
8 (Pause in proceedings.)
9 Q. My question to you, Dr. Romriell, is do you
10 know whether Dr. Misner in the year 2003 worked for the
11 group a minimum of 1,080 hours?
12 A. I do not know.
13 Q. Did he work four days a week during 2003?
14 A. I never kept track of how many days a week.
15 Q. Turn to the next page, Page 4, Article III,
16 Term of Employment. Take as long as you need to read it,
17 but my question will be, does this agreement have a
18 ten-year term?
19 A. Yes.
20 Q. Look at Page 12, please. Do you see there is
21 a Section 12.9, Arbitration Provision?
22 A. Okay.
23 Q. It states, "Any dispute or controversy arising
24 out of or relating to this agreement shall be settled
25 exclusively by arbitration."

1 Q. Over where?
2 A. At the Kidds Dental that you are referring to.
3 Q. So you don't know if Dr. Misner is involved in
4 the Kidds Dental business?
5 A. I didn't say that. You asked me if he was
6 working. I don't know that he is.
7 Q. So you know that Dr. Misner is a principal of
8 Kidds Dental, correct?
9 A. I do not know who the principals are.
10 Q. Dr. Misner is involved in Kidds Dental, yes?
11 A. I don't know. I have made it a point not to
12 know.
13 Q. So then as you sit here today you don't know
14 whether or not Drs. Misner and Bybee have a business
15 relationship?
16 A. They do have a business relationship.
17 Q. And they have a business relationship --
18 A. They have a business relationship that deals
19 with Xylitol, they go nationally and they are recognized
20 as national experts of Xylitol.
21 Q. What's Xylitol?
22 A. It's a sugar, antidecay sugar.
23 Q. Do you know as you sit here today whether Drs.
24 Misner and Bybee have a business relationship in a
25 business providing dental care to people?

1 Has Pocatello Dental Group instituted an
2 arbitration against Dr. Misner under this agreement?
3 A. No.
4 Q. And you have no intention of doing that,
5 correct?
6 A. Yes.
7 Q. Now, Dr. Misner also hired Dr. Bybee to work
8 for him, correct?
9 A. Yes.
10 Q. At Dr. Misner's new business, Kidds Dental,
11 right?
12 A. I don't know. I thought you meant at the
13 Pocatello Dental Group.
14 Q. You know that Dr. Bybee is working at Kidds
15 Dental?
16 A. Yes.
17 Q. But you don't know whether it's as an employee
18 or as a partner; is that right?
19 A. Right.
20 Q. But either way is it fair to say that Dr.
21 Misner failed to wait two years from the time he left
22 Pocatello Dental to begin working with Dr. Bybee?
23 A. I don't know that he is working over there.
24 Q. Working in the same business with Dr. Bybee.
25 A. I don't know that he is working over there.

1 A. I do not know.
2 (Deposition Exhibit No. 7 marked for
3 identification.)
4 Q. Have you seen what we have marked as Exhibit
5 No. 7 before, Dr. Romriell?
6 A. I don't recall it.
7 Q. In the file that you got from Dr. Misner
8 related to Pocatello Dental Group, was there
9 correspondence in that file?
10 A. Most likely.
11 Q. Let me ask you about some of the things stated
12 in Exhibit No. 7. It begins, "Dear Barbara, Drs. Ormond
13 and Romriell reported to you on the recent meeting with
14 yourself and Mr. Call," and this is dated 8/14/03.
15 Did you have a meeting with Barbara and Mr.
16 Call about that time?
17 A. I think we did.
18 Q. And did you report to Dr. Misner about that
19 meeting?
20 A. I'm not positive, but I probably did.
21 Q. And Dr. Misner was the president of the PC at
22 the time?
23 A. Yes, he was.
24 Q. Let's turn to the second page of Exhibit
25 No. 7.

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1 Q. And it's a long paragraph, but could you just
2 confirm that about two thirds of the way down the
3 paragraph there is the twenty-mile noncompete area that
4 we have seen in some of the other agreements?
5 A. It does say that.
6 Q. And if we look at Section 1 under Term, is the
7 term of that obligation three years from the effective
8 time or two years from the date of termination of the
9 member's employment with the group?
10 A. Yes.
11 Q. On Page 5, do you recognize Dr. David Porter
12 Sutton's signature?
13 A. Yes.
14 Q. When Dr. David Porter Sutton left Pocatello
15 Dental Group, he in fact went to practice more than 20
16 miles outside of the radius of your current office?
17 A. Yes.
18 Q. So he complied with this agreement, correct?
19 A. Yes.
20 (Deposition Exhibit No. 10 marked for
21 identification.)
22 Q. Now, No. 10 is a Dentist's Employment
23 Agreement in a form similar to what we have seen before
24 A. Yes.
25 Q. And on Page 13 do you recognize Dr. David

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1 Pocatello Dental Group?
2 A. I don't plan on being there forever.
3 Q. Do you have a specific date at which you
4 intend to leave?
5 A. No.
6 Q. Do you have any intention right now when you
7 do leave of complying with this provision?
8 MR. HAWKES: I object to the question as
9 asking the witness to speculate on what conditions may be
10 at some date in the future.
11 MR. KERL: Join in the objection.
12 MR. HAWKES: You don't have to answer that.
13 Q. If you have an intention, you need to tell me,
14 because that's not a grounds to instruct a witness not to
15 answer if you don't have an intention.
16 A. I don't have an intention.
17 (Deposition Exhibit No. 12 marked for
18 identification.)
19 Q. Dr. Romriell, is Exhibit No. 12 a noncompete
20 agreement you signed with GMS Dental Group Management,
21 Inc.?
22 A. Yes, it is.
23 Q. And in Page 2, Section 2, does that have the
24 two-year and twenty-mile noncompete?
25 A. Yes, it's like the others.

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1 Porter Sutton's signature?
2 A. Yes.
3 Q. There is an Article IX in the agreement
4 beginning on Page 7, Proprietary Information; Non
5 Solicitation; Non-competition. And it goes on to Page 8,
6 and if you look at the last paragraph on Page 8, could
7 you let me know if this has the two-year and twenty-mile
8 noncompete that we have seen in some of the other
9 documents?
10 A. Yes.
11 Q. And Dr. David Porter Sutton has complied with
12 that, correct?
13 A. Yes.
14 (Deposition Exhibit No. 11 marked for
15 identification.)
16 Q. Dr. Romriell, do you recognize what we have
17 marked as Exhibit No. 11?
18 A. I have seen this one before.
19 Q. And is this your Dentist's Employment
20 Agreement with Idaho Dental Group, PA?
21 A. Yes.
22 Q. And if we look at Page 8, does this have the
23 same two-year noncompete?
24 A. Yes.
25 Q. Do you have any current intentions of leaving

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1 Q. Now let's take a look at a document that might
2 not be like the others in all respects.
3 (Deposition Exhibit No. 13 marked for
4 identification.)
5 Q. Have you seen what we have marked as Exhibit
6 No. 13 before?
7 A. Yes.
8 Q. And what is Exhibit No. 13?
9 A. It's a Dentist's Employment Agreement.
10 Q. Was this a document that was put together on
11 behalf of Pocatello Dental Group with your brother, Dr.
12 Dwight Romriell?
13 A. Yes.
14 Q. Now, let's compare this agreement, Exhibit
15 No. 13, with your Exhibit No. 11, please. If we start
16 off on the second page of both agreements, there is a
17 Section 1.1 entitled Employment, correct?
18 A. Yes.
19 Q. And 1.2, entitled Outline of Provider's
20 Duties.
21 A. Yes.
22 Q. You don't need to go through all of them, but
23 if you look on Page 3 of Exhibit No. 13 and Page 2 of
24 Exhibit No. 11, there is a 1.3, Rights and Duties of
25 Group; is that right?

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1 Q. And it's a long paragraph, but could you just
2 confirm that about two thirds of the way down the
3 paragraph there is the twenty-mile noncompete area that
4 we have seen in some of the other agreements?
5 A. It does say that.
6 Q. And if we look at Section 1 under Term, is the
7 term of that obligation three years from the effective
8 time or two years from the date of termination of the
9 member's employment with the group?
10 A. Yes.
11 Q. On Page 5, do you recognize Dr. David Porter
12 Sutton's signature?
13 A. Yes.
14 Q. When Dr. David Porter Sutton left Pocatello
15 Dental Group, he in fact went to practice more than 20
16 miles outside of the radius of your current office?
17 A. Yes.
18 Q. So he complied with this agreement, correct?
19 A. Yes.
20 (Deposition Exhibit No. 10 marked for
21 identification.)
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23 Agreement in a form similar to what we have seen before.
24 A. Yes.
25 Q. And on Page 13 do you recognize Dr. David

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2 A. Yes.
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4 beginning on Page 7, Proprietary Information; Non
5 Solicitation; Non-competition. And it goes on to Page 8,
6 and if you look at the last paragraph on Page 8, could
7 you let me know if this has the two-year and twenty-mile
8 noncompete that we have seen in some of the other
9 documents?
10 A. Yes.
11 Q. And Dr. David Porter Sutton has complied with
12 that, correct?
13 A. Yes.
14 (Deposition Exhibit No. 11 marked for
15 identification.)
16 Q. Dr. Romriell, do you recognize what we have
17 marked as Exhibit No. 11?
18 A. I have seen this one before.
19 Q. And is this your Dentist's Employment
20 Agreement with Idaho Dental Group, PA?
21 A. Yes.
22 Q. And if we look at Page 8, does this have the
23 same two-year noncompete?
24 A. Yes.
25 Q. Do you have any current intentions of leaving

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1 Pocatello Dental Group?
2 A. I don't plan on being there forever.
3 Q. Do you have a specific date at which you
4 intend to leave?
5 A. No.
6 Q. Do you have any intention right now when you
7 do leave of complying with this provision?
8 MR. HAWKES: I object to the question as
9 asking the witness to speculate on what conditions may be
10 at some date in the future.
11 MR. KERL: Join in the objection.
12 MR. HAWKES: You don't have to answer that.
13 Q. If you have an intention, you need to tell me,
14 because that's not a grounds to instruct a witness not to
15 answer if you don't have an intention.
16 A. I don't have an intention.
17 (Deposition Exhibit No. 12 marked for
18 identification.)
19 Q. Dr. Romriell, is Exhibit No. 12 a noncompete
20 agreement you signed with GMS Dental Group Management,
21 Inc.?
22 A. Yes, it is.
23 Q. And in Page 2, Section 2, does that have the
24 two-year and twenty-mile noncompete?
25 A. Yes, it's like the others.

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1 Q. Now let's take a look at a document that might
2 not be like the others in all respects.
3 (Deposition Exhibit No. 13 marked for
4 identification.)
5 Q. Have you seen what we have marked as Exhibit
6 No. 13 before?
7 A. Yes.
8 Q. And what is Exhibit No. 13?
9 A. It's a Dentist's Employment Agreement.
10 Q. Was this a document that was put together on
11 behalf of Pocatello Dental Group with your brother, Dr.
12 Dwight Romriell?
13 A. Yes.
14 Q. Now, let's compare this agreement, Exhibit
15 No. 13, with your Exhibit No. 11, please. If we start
16 off on the second page of both agreements, there is a
17 Section 1.1 entitled Employment, correct?
18 A. Yes.
19 Q. And 1.2, entitled Outline of Provider's
20 Duties.
21 A. Yes.
22 Q. You don't need to go through all of them, but
23 if you look on Page 3 of Exhibit No. 13 and Page 2 of
24 Exhibit No. 11, there is a 1.3, Rights and Duties of
25 Group; is that right?

1 A. Okay.
2 Q. Now, in Exhibit No. 11, if we go to Article
3 IX --
4 A. This one is 12.
5 Q. You should be looking at 11.
6 A. Okay. What page?
7 MR. HAWKES: Article IX starts on Page 7.
8 A. Okay, I have got Page 7.
9 Q. Now, in Exhibit No. 13 I can't find an Article
10 IX entitled Proprietary Information; Nonsolicitation;
11 Non-competition. Do you know if there is such a section
12 in there?
13 A. I don't see one.
14 Q. Do you know why there is no noncompetition
15 agreement in Exhibit No. 13?
16 A. No.
17 Q. The reason that there is no noncompetition
18 provision in Exhibit No. 13 is that you didn't want to
19 restrict your brother's ability to compete with Pocatello
20 Dental, correct?
21 MR. HAWKES: Objection to that question, it
22 states a conclusion and asks the witness to speculate as
23 to the end result of a document in which he did not
24 participate in negotiating.
25 Q. Do you have any knowledge about why there is

1 you?
2 A. No.
3 Q. Because that wouldn't be true.
4 A. That's true. And he does specialize in
5 pediatric dentistry.
6 Q. In that he sees --
7 A. Exclusively.
8 Q. Children.
9 A. Children.
10 (Deposition Exhibit No. 15 marked for
11 identification.)
12 Q. Have you seen what we have marked as Exhibit
13 No. 15 before?
14 A. Yes.
15 Q. And on Page 21, is that your signature
16 (indicating)?
17 A. Yes, it is.
18 Q. And these are Pocatello Dental Group responses
19 to defendants' first set of interrogatories?
20 A. Yes.
21 Q. And you verified that the facts stated therein
22 are true; is that right?
23 A. Yes.
24 Q. Now, on Page 4, there is a sentence in the top
25 third of the page that says, "In addition, Drs. Misner

1 no noncompete in Exhibit No. 13?
2 A. I had no input on the contract. I was not
3 part of the negotiations.
4 Q. Did you have any discussions with your
5 brother, Dr. Dwight Romriell, about having a noncompete
6 provision in Exhibit No. 13?
7 A. No.
8 Q. Did you have any discussions on that subject
9 with Dr. Misner?
10 A. No.
11 Q. With anyone other than your counsel?
12 A. No; I haven't even had with my counsel.
13 (Deposition Exhibit No. 14 marked for
14 identification.)
15 Q. Have you seen Exhibit No. 14 before?
16 A. Yes.
17 Q. Is Exhibit No. 14 an affidavit that you signed
18 in this litigation?
19 A. Yes.
20 Q. And did you read it before you signed it?
21 A. Yes.
22 Q. Let's look on Page 3, Paragraph 4. Now, you
23 state on the first sentence, "Dr. Larry Bybee is an
24 employee-dentist who specializes in pediatric dentistry."
25 You didn't imply that he was a certified specialist, did

1 and Bybee have lacked sufficiently trained staff since
2 October 3, 2003."
3 Now, that problem didn't start on October 3,
4 2003, right?
5 A. Right. That's when their staff left.
6 Q. October 3, 2003?
7 A. That's when the people who had given their
8 notice, it was in that period of time that they left the
9 office and there was not replacements for them.
10 Q. And that's coincidentally the date of the
11 confirmation of ISC's bankruptcy plan?
12 A. Is that the date of their --
13 Q. I just don't want you to be misled here. It's
14 my understanding that's where that date came from. But
15 is it your belief that --
16 A. Actually, they may have had insufficient staff
17 a few days before that. But it's really close to October
18 3.
19 Q. Did they have insufficient staff, let's say,
20 in August of 2003?
21 A. Actually, that doesn't say that's when they
22 started having it. It says they still had --
23 Q. Right. Is it your view that they had
24 insufficient staff in, let's say, August of 2003?
25 A. No.

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1 hadn't been convicted of anything. Have you been
 2 prosecuted by the Internal Revenue Service?
 3 A. No.
 4 Q. Do you have tax liens against any of your
 5 property?
 6 A. No. Is that relevant?
 7 MR. KAPLAN: Thank you, I have no questions
 8 right now.
 9 MR. HAWKES: I don't have anything.
 10 MR. KERL: None.
 11 EXAMINATION
 12 BY MR. HEARN:
 13 Q. If I understood you correctly, Dr. Romriell,
 14 did you say that the dental group was losing money each
 15 month?
 16 A. Yes.
 17 Q. How long has it been losing money each month,
 18 to the best of your knowledge?
 19 A. Three months.
 20 MR. HEARN: That's all.
 21 RE-EXAMINATION
 22 BY MR. KAPLAN:
 23 Q. Let me try to understand what you mean by the
 24 dental group is losing money. Are the dentists in
 25 Pocatello Dental Group still getting paid their 38 or

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1 whatever percentage?
 2 A. Yes.
 3 Q. Now, what expenses does Pocatello Dental Group
 4 itself pay?
 5 A. We have an office that was built for twelve
 6 doctors. We have five doctors. You do the calculations.
 7 Q. What expenses does Pocatello Dental Group
 8 itself as opposed to InterDent Services Corporation pay?
 9 A. None.
 10 Q. So when you said losing money, you aren't
 11 referring to Pocatello Dental Group itself, were you?
 12 A. No.
 13 Q. It's InterDent that's losing money.
 14 A. Absolutely.
 15 Q. For the past three months, so that would be --
 16 A. Actually their first loss month was in
 17 September after Dr. Porton Sutton left.
 18 Q. Were they profitable for a period after that?
 19 A. Marginally.
 20 Q. And for the past three months, it's been since
 21 Dr. Misner and Dr. Bybee left that they have been
 22 unprofitable again, correct?
 23 A. Yes.
 24 MR. KAPLAN: Okay, thank you.
 25

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1 RE-EXAMINATION
 2 BY MR. HAWKES:
 3 Q. Greg, to the extent you have talked about
 4 profitability, it's my understanding you are simply
 5 relying upon what InterDent claims the fact is; is that
 6 true?
 7 A. Yes. We have no access to the records, to the
 8 total amount of dentistry that being done. The last
 9 several months they have given me a statement that I
 10 don't understand, I took it to Barbara Henderson, our
 11 bookkeeper-accountant-manager, and she tried to explain
 12 the numbers. And she said I don't know where they come
 13 up with these numbers. They don't make sense to me.
 14 MR. HAWKES: That's all I have.
 15 MR. KAPLAN: Thank you. We will recess this
 16 deposition which was the purpose for the TRO --
 17 MR. HAWKES: Well, I saw no such limitation in
 18 the deposition notice. I made no agreement to that.
 19 MR. KAPLAN: Under Judge Boyle's order I have
 20 another four hours or so with this witness. And he
 21 hasn't produced any documents, not a single one to date,
 22 so I am certainly not going to conclude this deposition,
 23 but we will recess for now.
 24 MR. HAWKES: Whatever the orders are, we will
 25 honor those, but I certainly did not agree to any

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1 limitation as stated.
 2 MR. KAPLAN: Nor did you object, Mr. Hawkes.
 3 MR. HAWKES: Well, where was the limitation
 4 stated?
 5 MR. KAPLAN: I stated it to you in writing
 6 days ago.
 7 MR. HAWKES: Not in the notice. Understood, I
 8 don't want to argue with you.
 9 (Witness excused at 11:40 a.m.)
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Page 10

1 position?
 2 A. Full time.
 3 Q. How long did you stay a full-time dentist with
 4 the Pocatello Dental Group?
 5 A. Until February of '96.
 6 Q. Then what did you do in February of '96?
 7 A. I retired.
 8 Q. How long did you retire?
 9 A. About a year.
 10 Q. So what did you do in '97?
 11 A. In July of '97 Dr. Russ Misner asked me to
 12 join his practice.
 13 Q. And this is at Pocatello Dental Group?
 14 A. Yes.
 15 Q. What do you mean join his practice?
 16 A. He asked me to come and help him treat
 17 children.
 18 Q. So you were going to see patients who were
 19 already coming to him, was that the idea?
 20 A. Correct.
 21 Q. As opposed to patients coming to other
 22 Pocatello Dental Group dentists, were you going to see
 23 any of their patients?
 24 A. No, children only. I had worked with Russ in
 25 late 19 -- I am trying to remember. I am just trying to

Page 11

1 remember when my wife was killed, this is what it all
 2 keys around. I think it was late -- I don't know, '95 or
 3 '96. I worked with him while I was still at the group
 4 part time.
 5 Q. When you were at the group from 1990 to 1996,
 6 did you work as a general dentist?
 7 A. Yes.
 8 Q. And you saw adults as well as children?
 9 A. Mostly adults but I saw some children, yes.
 10 Q. So from 1997 you went back to working at Dr.
 11 Misner's practice. How long did you do that?
 12 A. Until March 15 of 2004.
 13 Q. Then what did you do?
 14 A. I went and built a new office here in
 15 Pocatello.
 16 Q. When you say built a new office, is it a new
 17 building or were you remodeling an existing space?
 18 A. It's an existing space, so leasehold
 19 improvements.
 20 Q. Had it been a dental office previously?
 21 A. No.
 22 Q. That's the space at 716 Yellowstone?
 23 A. Yes.
 24 Q. When did you start remodeling that space?
 25 A. The day that construction started was March

Page 12

1 22, 2004.
 2 Q. And do you have a lease of that space?
 3 A. I don't understand what you are asking.
 4 Q. Is that a leased space?
 5 A. Yes.
 6 Q. And who is the lease in the name of?
 7 A. Orthodontic Centers of America.
 8 Q. Do you sublease from Orthodontic Centers of
 9 America?
 10 A. Yes, I do.
 11 Q. I guess the question I was getting at is when
 12 I say do you sublease, is it a particular business or is
 13 it you personally or who is the sublessee?
 14 A. Valley Dental, doing business as Kidds Dental.
 15 Q. Valley Dental is a corporation?
 16 A. Yes, it is.
 17 Q. And are you a shareholder of that corporation?
 18 A. Yes, I am.
 19 Q. Are there other shareholders?
 20 A. No, there are not.
 21 Q. Are you an officer of that company?
 22 A. Yes.
 23 Q. President?
 24 A. President.
 25 Q. Are there other officers?

Page 13

1 A. Yes.
 2 Q. Who?
 3 A. Russ Misner.
 4 Q. What is his position?
 5 A. Secretary.
 6 Q. When did your office actually open for
 7 business?
 8 A. The first patient was June 11.
 9 Q. Did you make requests for transfer of patient
 10 records prior to June 11?
 11 A. Yes.
 12 Q. When was the first time you made such a
 13 request? Was it sometime in April?
 14 A. I saw patients at my brother's office around
 15 the first of April, so requests could have been made in
 16 late March or early April.
 17 Q. So for the period from the beginning of April
 18 until June 11 you were seeing patients at your brother's
 19 office; is that right?
 20 A. Yes.
 21 Q. And what name does your brother do business
 22 under?
 23 A. Just Darryl Bybee, D.D.S.
 24 Q. Is it a professional corporation?
 25 A. I don't know.

Page 14

1 Q. Does Dr. Misner have any kind of interest in
2 your brother's business?
3 A. I don't know.
4 Q. Now, Dr. Misner also does business as Kidds
5 Dental, correct?
6 A. Correct.
7 Q. He has an office in Burley?
8 A. That's correct.
9 Q. is his business also Valley Dental or does he
10 have another formal corporate name?
11 A. It's Valley Dental doing business as Kidds
12 Dental in Burley.
13 Q. So Valley Dental has two offices, one in
14 Pocatello and one in Burley?
15 A. Yes.
16 Q. And Dr. Misner is not an owner of Valley
17 Dental?
18 A. No, he is not.
19 Q. Is Dr. Misner an employee of Valley Dental?
20 A. He has a contract agreement.
21 Q. He has a written contract?
22 A. Yes.
23 Q. And he is also an officer of the company?
24 A. Yes.
25 Q. Does Dr. Misner have another business for

Page 15

1 which he practices dentistry besides Valley Dental?
2 A. I don't know the answer to that.
3 Q. Now, physically where you practice, do you
4 practice solely in Pocatello?
5 A. Me personally?
6 Q. Yes.
7 A. Yes.
8 Q. And Dr. Misner, does he also practice out of
9 your Pocatello office?
10 A. He has been there.
11 Q. And he has been there to treat patients?
12 A. Yes.
13 Q. If you opened on June 11, how soon thereafter
14 was Dr. Misner there to treat patients?
15 A. He saw patients on June 11.
16 Q. Is there a regular schedule for when he is in
17 Pocatello, or how often is he there?
18 A. We have a schedule, yes.
19 Q. And how many days a week is he in Pocatello?
20 A. He is scheduled in three days a week.
21 Q. Does he also have a regular schedule for
22 practicing in Burley?
23 A. Yes, he does.
24 Q. How many days does he practice there?
25 A. Four days a month, four to five days a month.

Page 16

1 Q. Prior to the opening of your Kidds Dental
2 office in June, did Dr. Misner practice exclusively in
3 Burley after he left Pocatello Dental?
4 A. Yes, he did.
5 Q. Do you know what kind of schedule he had then
6 how many days a week he was working?
7 A. Four to five days a month.
8 Q. Do you have any specialty certification?
9 A. In dentistry?
10 Q. Yes.
11 A. No, I do not.
12 Q. You are a licensed dentist?
13 A. Yes.
14 Q. In what states?
15 A. State of Idaho.
16 Q. Dr. Misner does have a specialty
17 certification, correct?
18 A. Yes, he does.
19 Q. In what specialty?
20 A. Pediatric dentistry.
21 Q. How many employees does Kidds Dental have?
22 A. Fourteen.
23 Q. Are there other dentists besides you and Dr.
24 Misner?
25 A. Dr. Johnson, an orthodontist, will be there

Page 17

1 later this year.
2 Q. Do you have a contract with Dr. Johnson?
3 A. We are working on drawing that up.
4 Q. Dr. Johnson was formerly at Pocatello Dental
5 Group?
6 A. Yes.
7 Q. Now, was Dr. Misner involved at all in hiring
8 Dr. Johnson?
9 A. No.
10 Q. That's solely your involvement?
11 A. Yes. You are talking about hiring a dentist.
12 The contract is he is going to lease space from us, so we
13 are not per se hiring him, we are providing space for him
14 and he will pay for that space. He will have his own
15 employees, own supplies.
16 Q. Will he sign an employment agreement with your
17 company?
18 A. No, not unless recommended by our lawyer.
19 Q. Have you ever been convicted of a felony?
20 A. No.
21 Q. Any crime involving dishonesty?
22 A. No.
23 Q. Just to finish up your background, what
24 happened to the pizza business?
25 A. Couldn't sell enough pizza; it went bankrupt

Page 18

Page 20

1 in 1990. Darn good pizza, too.
2 Q. So then you are what's known as a general
3 dentist; is that right?
4 A. Yes.
5 Q. Now, are there other general dentists in
6 Pocatello who see children besides you?
7 A. Well, I don't know that for a fact, but I
8 would assume.
9 Q. Do you know for a fact that any of them do?
10 A. No.
11 Q. To your knowledge, does Dr. Corey Snow see
12 children?
13 A. I don't know.
14 Q. Do you take Medicare and Medicaid?
15 A. Yes.
16 Q. Do you know whether or not other dentists in
17 Pocatello who see children take Medicare or Medicaid?
18 A. Directly, no, I do not.
19 Q. You don't know one way or another, correct?
20 A. Correct.
21 Q. Of the staff in your Kidds Dental office, do
22 you have people who formerly worked for Pocatello Dental
23 Group?
24 A. Yes.
25 Q. Who?

1 Q. Sometime before March 15?
2 A. After.
3 Q. And how did she come to work at your company?
4 A. She filled out an application.
5 Q. Do you know if she was working for InterDent
6 when she filled out that application?
7 A. I do not.
8 Q. Now, let's talk about the steps by which you
9 and Dr. Misner set up Kidds Dental. Who had the idea of
10 leaving Pocatello Dental Group to set up this Kidds
11 Dental practice?
12 A. I think that that was provided by InterDent.
13 Q. InterDent suggested you leave and start a new
14 practice?
15 A. Indirectly when they filed bankruptcy and
16 started mishandling patients, yes, that was what fostered
17 the idea that it was time to look at other avenues.
18 Q. The idea was yours, not InterDent's, though;
19 is that correct?
20 A. Correct.
21 Q. And you mentioned mishandling patients. Are
22 you talking about credit type issues, payment issues?
23 A. I am talking about taking them off of recall
24 lists, calling them over, sending them to collections
25 when they owe \$8.37, refusing to see patients in pain

Page 19

Page 21

1 A. Thirteen out of the fourteen.
2 Q. Why don't you just list the names of the ones
3 you can remember.
4 A. Joril Hillman, Penny Lish, Nelda Morrison,
5 Avrey (phonetic) Petersen, Tamara Simmons, Christy
6 Dewinter (phonetic), Cami Kinney, Cheri Howell, Kim
7 Iverson, Megan Misner.
8 Q. When did Ms. Hillman leave Pocatello Dental,
9 do you know?
10 A. They were all let go on March 15.
11 Q. So then all of them, however many there were,
12 were dismissed by Pocatello Dental; is that your
13 testimony?
14 A. Yes.
15 MR. HAWKES: Were they Pocatello Dental
16 employees or InterDent employees?
17 THE WITNESS: They were InterDent employees.
18 MR. HAWKES: Who let them go?
19 THE WITNESS: InterDent. The other one was
20 Melanie Connet (phonetic).
21 Q. And she was never employed at the Pocatello
22 Dental practice in Pocatello?
23 A. She was an employee of InterDent.
24 Q. When did she leave?
25 A. I don't know that.

1 directed by the receptionists who are under the direction
2 of InterDent, refusing to see a children with a swollen
3 face because the parents can't pay.
4 Q. Now, is that something you personally saw or
5 is it something that you heard about?
6 A. I saw it.
7 Q. Do you know when that occurred?
8 A. February of this year.
9 Q. And do you recall the name of the patient?
10 A. I do not. We did see them.
11 Q. So they were treated by you at the Pocatello
12 Dental Group office?
13 A. Yes.
14 Q. Do you recall other specific incidents of
15 patients in pain not being treated?
16 A. Not specifically.
17 Q. Let's go back, then, when was it that you or
18 Dr. Misner had the idea of going out and forming this
19 Kidds Dental group practice?
20 MR. KERL: I object to the form of the
21 question. I don't think that's his prior testimony or an
22 accurate statement.
23 A. Rephrase the question.
24 Q. Did you or Dr. Misner come up with the idea of
25 going out and forming the Kidds Dental group practice?

6 (Pages 18 to 21)

1 A. Yes.
2 Q. Whose idea was it, yours or his?
3 A. (Shrugs shoulders.)
4 Q. Something you came up with together?
5 A. Yes, it was a together thing.
6 Q. When did you come up with that idea?
7 A. Probably late 2003.
8 Q. Do you recall when you gave notice that you
9 were going to leave Pocatello Dental Group?
10 A. October or November of 2003.
11 Q. Was that in writing?
12 A. Yes.
13 Q. Who was it provided to in writing?
14 A. To the president of the Pocatello Dental
15 Group.
16 Q. That's Dr. Greg Romriell or was it Dr. Misner
17 at the time?
18 A. I don't remember. I think it was Dr.
19 Romriell.
20 Q. And did both you and Dr. Misner provide notice
21 at the same time?
22 A. I don't believe so.
23 Q. Who gave notice first?
24 A. I don't remember. I would have to look at the
25 documents to see that.

1 number of patients that needed to be seen at my brother's
2 office, so it was at least mitigated.
3 Q. Was there any request made of Dr. Misner to
4 stay temporarily to see patients or to come in and see
5 patients?
6 A. I don't know of that directly.
7 Q. Indirectly had you heard that?
8 A. (Witness shakes head negatively.) Well, Russ
9 offered, the same as I did, to see kids for free at the
10 Pocatello Dental Group until such a time as the other
11 office was available.
12 Q. What happened to that offer?
13 A. It was rejected by InterDent.
14 Q. And how do you know InterDent rejected that
15 offer?
16 A. Because I was told by Bruce Call in a phone
17 conversation.
18 Q. We started off talking about how you and Dr.
19 Misner formed your Kidds Dental practice. You came up
20 with the idea and then what was the first concrete step
21 that you took towards putting that practice together?
22 A. We flew back to New Orleans to talk to
23 Orthodontic Centers of America.
24 Q. And why did you do that?
25 A. For funding issues.

1 Q. And by the documents, you mean notice letters?
2 A. Notice letters.
3 Q. When you gave your notice letter, did Dr.
4 Romriell or anybody else at Pocatello Dental Group do
5 anything to stop you from leaving?
6 A. No.
7 Q. Do you know if anyone at Pocatello Dental
8 Group did anything to stop Dr. Misner from leaving?
9 A. I don't know that.
10 Q. Were there any discussions with Dr. Romriell
11 or others at Pocatello Dental Group to the effect of,
12 hey, don't go, we would like you to stay, was there
13 anything like that?
14 A. No.
15 Q. So there was no request from them that you
16 stay; is that right?
17 A. There was only requests at the end for me to
18 stay longer to treat patients, until the current office
19 at 716 Yellowstone opened.
20 Q. And that problem was solved by seeing patients
21 at your brother's office; is that right?
22 A. It was a Band-Aid, it wasn't solved.
23 Q. It was taken care of temporarily; is that
24 fair?
25 A. It was taken care of -- I couldn't see the

1 Q. Did you get funding from them?
2 A. Yes.
3 Q. And did you present a business plan to them by
4 which you got funding?
5 A. No, presented a business plan to Wells Fargo
6 Bank and received funding there, also.
7 Q. What did you present to Orthodontic Centers of
8 America, if anything?
9 A. Just an idea.
10 Q. Did you give them anything in writing?
11 A. No.
12 Q. This business plan that you presented to Wells
13 Fargo, when did you present that?
14 A. January of 2004.
15 Q. And do you have a copy of that?
16 A. Not with me.
17 Q. To your knowledge, does Dr. Misner have a copy
18 of it?
19 A. No.
20 Q. Did you have the only copy?
21 A. I had a copy, Wells Fargo and Bank of Idaho
22 had a copy.
23 Q. And did the business plan make projections as
24 far as revenue?
25 A. Yes.

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1 Q. And what sort of revenues did you project?
 2 A. The first year 1.1 million.
 3 Q. Now, of that 1.1 million, a very high
 4 percentage of that would have been generated from
 5 Pocatello as opposed to Burley, correct?
 6 A. Probably 80 percent. That 1.1 also included
 7 Dr. Johnson in there, also.
 8 Q. Did you make projections beyond the first
 9 year?
 10 A. Yes, out to 2006.
 11 Q. Do the revenues go up as the years go on?
 12 A. Yes.
 13 Q. What was the projection for the second year?
 14 A. Oh, 1.25, something like that, and the last
 15 year was just over 1.4.
 16 Q. Did you make projections about the numbers of
 17 patients you would be seeing?
 18 A. I don't remember that.
 19 Q. How was the 1.1 million calculated, how did
 20 you come up with that number?
 21 A. Based on what we had done in the past at
 22 Pocatello Dental Group.
 23 Q. So it was based on an -- was it based on an
 24 expectation that a percentage of the patients you saw at
 25 Pocatello Dental Group would see you in your new

Page 27

1 practice?
 2 A. Yes.
 3 Q. And what percentage was that?
 4 A. About 60 percent.
 5 Q. And when I say patients seeing you, I meant
 6 you and Dr. Misner together. Does that change your
 7 answer?
 8 A. No.
 9 Q. Are all of these projections based on you and
 10 Dr. Misner and Dr. Johnson together?
 11 A. Yes.
 12 Q. And the 60 percent number, how did you come up
 13 with that?
 14 A. Reached up and grabbed it (indicating).
 15 Q. Best estimate?
 16 A. Best guess.
 17 Q. In the less than a month you have been open,
 18 how many patients have you been seeing?
 19 A. Twenty a day last week -- or this week.
 20 Q. And the week before?
 21 A. Less than ten a day.
 22 Q. And how many days a week are you open?
 23 A. Monday through Friday.
 24 Q. So you would have seen about a hundred
 25 patients last week and about 50 the week before; is that

Page 28

1 correct?
 2 A. No, I saw about 80 patients this week and
 3 about 30 the week before. We weren't open five full days
 4 last week.
 5 Q. And do you have patients scheduled for next
 6 week?
 7 A. I hope so.
 8 Q. Do you know how many?
 9 A. No, I do not.
 10 Q. How many days do you plan to be open next
 11 week?
 12 A. Five days.
 13 Q. And the same the following week?
 14 A. I'd have to have a calendar.
 15 Q. But for the July 4 holiday in there somewhere.
 16 Do you plan to keep your office open full time for the
 17 foreseeable future?
 18 A. Yes.
 19 Q. And would you expect this 80 patients a week
 20 number to go up as time goes on?
 21 A. Yes.
 22 Q. What would full capacity for you be?
 23 A. Oh, 130 per day.
 24 Q. So that would be 900 per week -- no, wait, you
 25 are not open five days --

Page 29

1 A. Well, we are scheduled five days, we are not
 2 always open five days.
 3 Q. What would be that be a week, what would your
 4 expectation be, how many patients would you see a week
 5 A. 120 times four, 480.
 6 Q. Was it four or five days a week?
 7 A. The office is open five days, we work four;
 8 some days we will work five. Some days we are off
 9 Thursday, some we are working.
 10 Q. Are there days that you work and Dr. Misner
 11 doesn't and vice versa, or do you both take the same day
 12 off?
 13 A. No, we take different days off -- well, it's
 14 an open schedule. He is scheduled in Burley and then
 15 I'll be here scheduled. We work most the time together
 16 when we are here in Pocatello.
 17 Q. Of the over a hundred patients you have seen
 18 so far, have any of them told you that they are going to
 19 go back to Pocatello Dental Group?
 20 A. No.
 21 Q. Have any of their parents told you that?
 22 A. No. They told me that they would not go back
 23 there. They are not treated very nicely to get their
 24 records. InterDent employees do not treat them very nice
 25 when they show up with a request for records.

Page 30

1 Q. What do they tell you about how they have been
2 treated?
3 A. They are very rude and very short, tell them
4 they don't have time and if they ever get around to it,
5 they will send the records.
6 Q. Has InterDent in fact sent the records that
7 you requested?
8 A. Yes, they have, as far as I know.
9 Q. Of the over hundred patients you have seen
10 already, what percentage of them are former Pocatello
11 Dental Group patients?
12 A. I would have to make a guess.
13 Q. Is it a pretty high percentage?
14 A. Probably above 60 percent, right at 60, 65
15 percent.
16 Q. Is that your best estimate?
17 A. Yes.
18 Q. Now, have you done any kind of advertising?
19 A. No -- we are in the phone books.
20 Q. Other than the phone books, have you done any
21 sort of advertising or solicitation of patients?
22 A. We put a notice in the paper that we had left
23 the group and that we'd be seeing patients later in
24 Pocatello and Burley.
25 Q. What paper?

Page 31

1 A. The Burley -- whatever the Burley paper is
2 called, and the Post Register in Idaho Falls, and the
3 Idaho State Journal.
4 Q. When did you --
5 A. I actually think in the Twin Falls paper,
6 also.
7 Q. When did you put that ad in the newspapers?
8 A. April, the first week in April and the third
9 week in April.
10 Q. Are you currently running that ad?
11 A. No.
12 Q. Do you plan to run it again?
13 A. No.
14 Q. Now, you got some financing from --
15 A. Orthodontic Centers.
16 Q. Did you also get financing from Wells Fargo?
17 A. Yes.
18 Q. Did Dr. Misner supply any of the capital for
19 this new business?
20 A. No.
21 Q. When did you sign your lease?
22 A. December 9.
23 Q. Who signed it?
24 A. I did.
25 Q. Did you put up any of your own money in this

Page 32

1 business?
2 A. Yes.
3 Q. What percentage of it is financed?
4 A. 95.
5 Q. And how much did you invest in it?
6 A. About \$30,000.
7 Q. Take a look, please, at Exhibit No. 4. Just
8 for your information, what we have done is redacted the
9 names of patients because we don't have a protective
10 order entered. Is this the form of request for dental
11 records that you are using at your office?
12 A. Yes.
13 Q. And is this your current address and business
14 name, Kidds Dental, 716 Yellowstone Avenue, Pocatello?
15 A. Yes, it is.
16 Q. And that's about two miles from the Pocatello
17 Dental Group office?
18 A. Approximately, yes.
19 Q. And it may be hard to tell with the names
20 redacted, but do these appear to be request for dental
21 records forms that you sent over to Pocatello Dental
22 Group?
23 A. How do I answer that? They appear to be.
24 Appear is not a very strong word.
25 Q. Is there anything about them that makes you

Page 33

1 think that they are not?
2 A. Yes.
3 Q. What?
4 A. Just the position on the paper, it's got a fax
5 number up here (indicating).
6 Q. So the way it was copied gives you some
7 concern?
8 A. Yes.
9 Q. But you in fact did get records from Pocatello
10 Dental Group in response to requests for release of
11 dental records forms that such records be sent to the
12 offices of Kidds Dental?
13 A. I did request records from the Pocatello
14 Dental Group, yes, I did.
15 Q. And you got those records?
16 A. As far as I know.
17 Q. Now, I am going to show you a document that
18 was produced by Dr. Misner but not mark it as an exhibit
19 because it does have patient names on it. For the
20 record, this is Bates stamped LRM 000072 through 88, and
21 are these also requests for dental records forms that you
22 use?
23 A. Yes.
24 Q. Now, some of them, for example, the first
25 page, request that records be sent to Burley. Did you in

1 fact request that some records be sent to Burley in
2 addition to Pocatello?
3 A. Yes.
4 Q. How is it that you decided to send the records
5 one place or another?
6 A. Well, I would assume that these are Burley
7 patients.
8 Q. So there is some process of decision making
9 where you use the Burley form for Burley and the
10 Pocatello form for Pocatello?
11 A. Yes.
12 Q. But looking at page Bates stamped LRM 000079,
13 is this a request for records to be transferred to your
14 Pocatello office?
15 A. That's what it appears to be, yes.
16 Q. And there is a fax line, Holy Rosary Catholic
17 Church. Do you know if you have a patient associated
18 with that entity?
19 A. I don't know.
20 Q. Now, do you know what kind of revenue you and
21 Dr. Misner generated at Pocatello Dental in 2003?
22 A. Yes.
23 Q. What's that?
24 A. I only know -- it's very difficult because
25 there is no record keeping, there is no way to track

1 marked as Exhibit No. 7 before?
2 A. I glanced through it quickly.
3 Q. Today?
4 A. Yes, sir.
5 Q. Do you recognize the handwriting on the second
6 page? Is that Dr. Misner's?
7 A. I would say it's similar to his.
8 Q. Do you recognize that phone number?
9 A. That is my cell phone number.
10 Q. Does Dr. Misner know your cell phone number,
11 does he call you on your cell phone?
12 A. Yes, he does.
13 Q. Now, this document is dated August 14, 2003.
14 On the second page, middle paragraph, there is a
15 reference to inadequate trained staff. Do you believe
16 you had an adequate trained staff at that time?
17 A. Absolutely.
18 Q. Had you had some recent turnover at that
19 point?
20 A. In January of that same year we met with Dan
21 Horrocks, an InterDent employee, the manager at the
22 Pocatello Dental Group, told him we had three girls
23 leaving. They were kind enough to give us notice, one
24 was pregnant, having a baby in July or August; one was
25 going to school, and one was moving to Washington.

1 records with InterDent. They do not allow you to look at
2 any of the books. So the only thing I can do is give you
3 the reported number. Whether it's accurate or not, I do
4 not know.
5 Q. What is the reported number?
6 A. Just under 1.7 million -- in 2003?
7 Q. Yes.
8 A. Right at 1.3 million.
9 Q. Was 1.7 2002?
10 A. Yes.
11 Q. How about 2001, do you remember that?
12 A. Right around 1.4.
13 Q. Now, do you have a specific reason to doubt
14 the accuracy of these numbers?
15 A. Any time someone is unwilling to show you
16 deposits so you can match numbers, yes, I have reason to
17 wonder whether the books are being cooked.
18 Q. And the reason you have is because you can't
19 see the back-up information?
20 A. Absolutely.
21 Q. Is there anything else that makes you think
22 that the numbers are inaccurate?
23 A. No.
24 Q. Take a look at what's been marked as Exhibit
25 No. 7, please. First of all, have you seen what we have

1 Having pediatric dental assistants is not as
2 easy as having adult dental assistants. You have to have
3 more than a spit sucker. You have to deal with patient
4 behavior and you have got to be able to work with
5 children. So it takes a lot of time to adequately train
6 a pediatric dental assistant. So we made that request.
7 Nothing was done with that. What Dan told me was he
8 approached Kevin Webb on that and Kevin Webb said, no,
9 that's not how we hire employees, we do not hire them
10 eight months in advance.
11 We made another request of Dan in April of
12 2003 and, again, Kevin vetoed the request for
13 employees --
14 Q. Let me stop you. You know Kevin vetoed that
15 because --
16 A. Dan said so.
17 Q. Keep going.
18 A. Then in June of 2003 Russ and I met in the
19 quiet room of the pediatric practice at the Pocatello
20 Dental Group with Bruce Call and Barbara Henderson and
21 again told them we are running out, we will have to shut
22 down the number of patients we see if we do not have
23 trained dental assistants, and that was in June of 2003.
24 Nothing was done. We gave them, I think there is a
25 document that stated that they had until July or August,

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1 this, this 4.3, the last sentence there?
2 A. Yes.
3 Q. And when you say it's breached, does that mean
4 that you weren't regularly scheduled three or more days
5 per week at the office?
6 A. I was not.
7 Q. And that was because you chose not to work
8 three or more days per week, correct?
9 A. No, that was because InterDent failed to staff
10 me adequately to see patients more than three days a
11 week.
12 Q. And in your judgment you decided that you
13 could not see patients three or more days per week,
14 correct?
15 A. Could not safely treat those children with the
16 staff that we had.
17 Q. Did you get anyone else's opinion about that?
18 A. I don't need another one's opinion. Dr.
19 Misner also had the opinion. He told me that I would not
20 be working anymore.
21 Q. Did you ask any outside dentists whether you
22 were correct in that determination?
23 A. No. They are my patients. I am going to
24 determine the care here in the State of Idaho. InterDent
25 has never, in my opinion, been concerned with patient

1 MR. KERL: Also, I am going to object because
2 I think the question presumes that these employees are
3 employees of Pocatello Dental Group. They are in fact
4 employees of ISC.
5 Q. And these former employees at the Pocatello
6 Dental Group for ISC, do they also work with Dr. Misner?
7 A. Do they currently work with Dr. Misner?
8 Q. Yes.
9 A. Yes.
10 Q. They weren't just hired to work for you, they
11 were hired to work for Dr. Misner as well?
12 A. They were hired to work for Kidds Dental.
13 They are actually employees of Orthodontic Centers of
14 America. And they were hired by Orthodontic Centers of
15 America.
16 Q. And do some of these employees, for example,
17 function as Dr. Misner's dental assistant?
18 A. Yes.
19 Q. Are any of these employees hygienists?
20 A. One.
21 Q. And which one is that?
22 A. Nelda Morrison.
23 Q. And does she work with Dr. Misner as well as
24 with you?
25 A. We are a true group.

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1 care. They are concerned with dollars only.
2 MR. KAPLAN: I move to strike that as
3 nonresponsive.
4 Q. 4.6, Solicitation of Employees, take a look at
5 it, please.
6 Do you see there is a restriction on making an
7 offer of employment to any person employed by the group
8 or subsidiary or affiliate of the group?
9 A. Yes.
10 Q. Have you complied with that?
11 A. Yes.
12 Q. Why do you believe you complied with that?
13 A. I never solicited any employee to come work
14 for me.
15 Q. Did you hire any employee?
16 A. I hired employees, yes. I did not solicit
17 them. They came to me, they filled out applications. I
18 never once spoke to an employee at the Pocatello Dental
19 Group to come work for me.
20 Q. Other than the last name that you gave us that
21 you hired who filled out the application after March 15,
22 she was employed at Pocatello Dental Group when she
23 filled out that application, right?
24 A. Yes, but she came to Kidds Dental to fill out
25 the form.

1 Q. She works for both of you?
2 A. Yes, she works for Orthodontic Centers of
3 America.
4 Q. Now, just out of curiosity, is it a
5 requirement, since you are working with Orthodontic
6 Centers of America, that you have an orthodontic dentist
7 in your practice?
8 A. No.
9 Q. And do you have a written agreement with
10 Orthodontic Centers of America to provide services for
11 you?
12 A. Yes.
13 Q. What kind of services do they provide for you?
14 A. Employee, marketing, financial, accounting,
15 record keeping, leasehold, improvements, build-out,
16 design, architecture.
17 Q. Do they own the improvements or do you own
18 them?
19 A. I own them.
20 Q. They just help you with acquiring them?
21 A. Yes. Valley Dental owns them, not I.
22 Q. Is any of the equipment in the Pocatello
23 office Dr. Misner's personal property?
24 A. Yes.
25 Q. Such as?

12 (Pages 42 to 45)



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ORTHODONTIC CENTERS OF IDAHO, INC.

3850 N CAUSEWAY BOULEVARD
METAIRIE, LA 70002

Type of Business: CORPORATION, GENERAL BUSINESS

Status: GOODSTANDING, ANREPT SENT 02 Jul 2003

State of Origin: DELAWARE

Date of 17 Sep 1999

Origination/Authorization:

Current Registered Agent: NATIONAL REGISTERED AGENTS INC
1423 TYRELL LN
BOISE, ID 83706

Organizational ID / Filing Number: C130484

Number of Authorized Stock Shares:

Date of Last Annual Report: 28 Jul 2003

Amendments:

Amendment filed 17 Sep 1999 CERTIFICATE OF AUTHORITY

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EXHIBIT 3
PAGE 1 OF 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June, 2004, I caused to be served a true copy of the foregoing **REPLY AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER** upon the following:

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 Via Facsimile
 Via Overnight Mail
 Via Hand Delivery

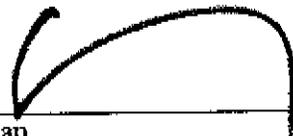
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DATED: this 28th day of June, 2004.



Scott J. Kaplan
Attorneys for ISC

REPLY AFFIDAVIT OF SCOTT J. KAPLAN IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER (MISNER NONCOMPETE) - 4