

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA**

In re:)	Case No. 06-10179 (B)
)	Chapter 11
OCA, INC., et al.,)	
)	Jointly Administered with
Debtors.)	Case Nos. 06-10180 - 06-10223
)	

OBJECTION TO ASSUMPTION OF BSA

NOW INTO COURT, through undersigned counsel, come William R. Izzard, D.D.S., and Rudy Izzard, D.D.S., P.C., a Texas Professional Corporation (collectively “Dr. Izzard”), pursuant to this Court’s *Order on Motion for Entry of Procedures Order for Assumption of Business Service Agreements Under Joint Chapter 11 Plan of Reorganization for OCA, Inc. and Filed Subsidiaries*, dated June 30, 2006, without prejudice to or waiver of Dr. Izzard’s constitutional rights to jury trial and due process, without consenting to the jurisdiction of the Bankruptcy Court, and without constituting a proof of claim, herein file their objection to the assumption of BSA as follows:

1. Dr. Izzard hereby objects to assumption of his BSA.
2. OCA cannot assume Dr. Izzard’s BSA because:
 - A. The BSA was terminated under state law and pursuant to the terms of the BSA pre-petition, and therefore the BSA is not executory and not assumable.
 - B. The BSA was illegal under state law:
 - i. as OCA has admitted, OCA is a partner and/or owner of Dr. Izzard’s orthodontic practice; and

ii. OCA's exercise of control over Dr. Izzard's orthodontic practice constitutes the unauthorized practice of dentistry;

iii. OCA's BSA resulted in OCA improperly and unlawfully sharing in Dr. Izzard's fees for the practice of dentistry.

3. Cure amounts. The exact cure amounts are unknown to Dr. Izzard. OCA materially breached the BSA pre-petition by, including but not limited to:

a. failing to provide comprehensive business and administrative support and services as set forth in the BSA;

b. failing to pay Dr. Izzard's expenses on a timely and regular basis;

c. failing to maintain Dr. Izzard's business and financial records in accordance with GAAP, as required by the BSA;

d. failing to properly calculate OCA's service fees and other expenses in accordance with the formulas set forth in the BSA;

e. failing to bill Dr. Izzard for "Center Expenses" at OCA's actual cost;

f. failing to efficiently and economically manage Dr. Izzard's orthodontic practice;

g. failing to timely pay patient refunds;

h. failing to remit all practice profits to Dr. Izzard;

i. overcharging Dr. Izzard for advertising costs;

j. overcharging Dr. Izzard for his share of corporate office overhead expenses and charging him for expenses that were not properly chargeable to him;

k. sweeping Dr. Izzard's cash into the accounts of OCA;

l. failing to act in good faith to Dr. Izzard in the performance of OCA's duties and obligations under the BSA and in failing to administer the contract in good faith;

m. failing to foster and maintain the name, fame and reputation of OCA as a reputable business organization, attractive to Orthodontists, conducive to inducing them to practicing under the OCA umbrella, by joining Dr. Izzard as a practitioner and expanding Dr.; Izzard's practice and/or acquiring Dr. Izzard's practice, as had been promised.

Dr. Izzard further objects that the Debtors further ask the court to enter an order as part of the assumption of the BSA that will provide that "the Affiliated Practice is required to and ordered to perform under and honor the terms of the assumed BSA." This order for mandatory performance constitutes an injunction. Bankruptcy Rule 7001(7) requires an adversary proceeding to obtain an injunction. Specific performance of the BSA's or other injunctive relief compelling Cook to perform under the BSA cannot be ordered by the Bankruptcy Court. Dr. Izzard contends that the BSA is a personal service contract or is otherwise the type of contract that is not subject to specific performance.

Further, OCA committed pre-petition breaches of fiduciary duties and other violations of state statutory and common law. The matter is in issue in a proceeding pending before the United States Bankruptcy Court for the Eastern District of Louisiana under proceeding No. 06-1201. Ascertaining Dr. Izzard's damages arising from OCA's breach of contract and breach of fiduciary duty requires access to OCA's business records in the in the exclusive custody, possession, and control of OCA. Pursuant to the BSA, OCA created and maintains all of Dr. Izzard's business records, and all of Dr. Izzard's business records remain in OCA's exclusive possession.

Dated August 11, 2006.

Respectfully submitted,

/s/ William C. Gambel

WILLIAM C. GAMBEL (LA Bar No. 5900)
MILLING BENSON WOODWARD L.L.P.
909 Poydras Street, Suite 2300
New Orleans, LA 70112-1010
Telephone: (504) 569-7000
Telecopier: (504) 569-7001
wgambel@millinglaw.com

HEATHER L. LANDRY (LA Bar No. 29941)
MILLING BENSON WOODWARD L.L.P.
214 Third Street, Suite 2B
Baton Rouge, LA 70801
Telephone: (225) 291-7300
Telecopier: (225) 291-4524
Hlandry@millinglaw.com
Attorneys for William R. Izzard, D.D.S. and
Rudy Izzard, D.D.S., P.C., a Texas Professional
Corporation

W350553

CERTIFICATE OF SERVICE

This will certify that copies of the foregoing pleading have been served via the Court's electronic ECF system in accordance with the ECF receipt or by regular U. S. mail, first class postage, to the persons set forth on the service list on this 11th day of August, 2006.

/s/ William C. Gambel

W350553