

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORTHODONTIC CENTERS OF ILLINOIS, INC.,)	
)	CASE NO. 04C-6852
)	
Plaintiff,)	Judge Milton I. Shadur/
)	Magistrate Sidney I. Schenkier
v.)	
)	
CHRISTINE MICHAELS, D.D.S., P.C., and)	
CHRISTINE MICHAELS, D.D.S.,)	
)	
Defendants.)	
_____)	

DEFENDANTS' MOTION FOR FINAL SUMMARY JUDGMENT ON DAMAGES

Defendants, CHRISTINE MICHAELS, D.D.S., P.C., and CHRISTINE MICHAELS, D.D.S. (collectively "Defendants"), through their attorneys Goldstein, Tanen & Trench, P.A. and Ungaretti & Harris, LLP, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the General Rules of the United States District Court for the Northern District of Illinois, hereby move for summary judgment. In support of their motion, the Defendants state as follows:

1. This Court entered a Memorandum Opinion and Order and Supplement to Memorandum Opinion and Order, on December 13, 2005 and December 22, 2005, respectively, dismissing all claims asserted by the parties in the above-styled matter, except for Counts V and VI (breach and default on Promissory Notes) of Plaintiff's Amended Complaint. With regard to Counts V and VI of the Amended Complaint, the Court granted summary judgment as to liability leaving to be tried the issue of damages, if any.

2. On February 13, 2006, the Defendants deposed Plaintiff by designation, pursuant to Fed. R. Civ. P. 30(b)(6) as to what sums Plaintiff contends remain due and owing on the Promissory Notes referenced in Counts V and VI of the Amended Complaint.

3. Plaintiff produced Anthony Paternostro, its senior vice-president of professional development. Based upon Plaintiff's own records, Mr. Paternostro was unable to:

- a. identify the sums due and owing on the five Promissory Notes, individually or collectively;
- b. account for any payments made upon the Promissory Notes;
- c. identify the applicable interest rate on the Promissory Notes;
- d. advise whether the interest rate was fixed or variable; or
- e. identify the monthly amortization amount for any of the Promissory Notes.

4. After deposing Mr. Paternostro, it became clear that Plaintiff is unable to support its claim for damages arising from breach of the Promissory Notes and that this issue is appropriate for summary judgment.

5. As Plaintiff has the burden of proving its damages by offering direct and tangible proof of the amounts due and owing on each of the Promissory Notes, and since Plaintiff is unable to provide such proof, the Defendants are entitled to final judgment as a matter of law.

WHEREFORE, the Defendants respectfully request that this Honorable Court grant their motion for final summary judgment on damages, and awarding Defendants such other relief as is appropriate.

Respectfully submitted,

By: _____

One of the Attorneys for Defendants

CHRISTINE MICHAELS, D.D.S., P.C. and

CHRISTINE MICHAELS, D.D.S.

Richard M. Goldstein

Fla. Bar No. 197319

Keith R. Gaudio

Fla. Bar No. 034436

GOLDSTEIN, TANEN & TRENCH, P.A.

One Biscayne Tower, Suite 3700

Two South Biscayne Boulevard

Miami, Florida 33131

Telephone: (305) 374-3250

Facsimile: (305) 374-7632

Counsel for Defendants

Stacey Feeley Cavanagh, (ARDC#6229225)

UNGARETTI & HARRIS LLP

3500 Three First National Plaza

Chicago, IL 60602-4283

Telephone No.: (312) 977-4400

Co-Counsel for Defendants

CERTIFICATE OF SERVICE

I, Stacey Feeley Cavanagh, hereby certify that a copy of **Defendants' Motion for Final**

Summary Judgment on Damages was served upon the following counsel of record:

Peter F. Lovato, III, Esquire
Boundas, Skarzynski, Walsh & Black, LLC
200 East Randolph Drive
Suite 7200
Chicago, IL 60601

by having same delivered via regular U.S. mail, on or before the hour of 5:00 p.m. on this _____ day
of March, 2006.

By: _____
STACEY FEELEY CAVANAGH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORTHODONTIC CENTERS OF ILLINOIS, INC.,)	
)	CASE NO. 04C-6852
)	
Plaintiff,)	Judge Milton I. Shadur/
)	Magistrate Sidney I. Schenkier
v.)	
)	
CHRISTINE MICHAELS, D.D.S., P.C., and)	
CHRISTINE MICHAELS, D.D.S.,)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR
FINAL SUMMARY JUDGMENT ON DAMAGES**

I. INTRODUCTION.

Defendants, CHRISTINE MICHAELS, D.D.S., P.C., and CHRISTINE MICHAELS, D.D.S. (collectively herein referred to as "MICHAELS") were sued by ORTHODONTIC CENTERS OF ILLINOIS, INC. ("OCS"), for breach of contract, conversion, unjust enrichment, promissory estoppel, default on promissory notes, and alter ego liability. MICHAELS countersued OCS for breach of contract and breach of fiduciary duty.

By Orders dated December 13, 2005 and December 22, 2005¹ this Court declared the parties' Business Management Agreement ("BSA") illegal and unenforceable, and dismissed all claims

¹ **Orthodontic Centers of Illinois v. Michaels**, 403 F. Supp. 2d 690 (N.D. Ill. 2005) and **Orthodontic Centers of Illinois v. Michaels**, 407 F. Supp. 2d 934 (N.D. Ill. 2005).

except Counts V and VI of OCS's Amended Complaint, which seek damages for breach of five(5) promissory notes.

On February 13, 2006, MICHAELS deposed OCS by designation, pursuant to Fed. R. Civ. P. 30(b)(6), concerning the present status of the promissory notes and what sums, if any, OCS contends remain due and owing. OCS's designated witness, Anthony Paternostro, who reviewed OCA's records and was the person most knowledgeable to testify concerning the subject promissory notes, was unable to identify or quantify the alleged sums due and owing on any of the notes. Further, he could not ascertain how much of MICHAELS' debt repayments, from January 1, 1998 through December 31, 2003, were applied to reduce the principal and accrued interest on the subject promissory notes.

As there are no disputed issues of material fact concerning OCS's inability to establish the sums it contends to be due and owing under the subject promissory notes, MICHAELS is entitled to final judgment as a matter of law against OCS on Counts V and VI of its Amended Complaint.

II. UNDISPUTED MATERIAL FACTS.

The undisputed material facts are contained in MICHAELS' Local Rule 56.1 Statement in Support of Motion for Final Partial Summary Judgment on Damages ("Statement"), submitted separately.

III. ARGUMENT.

A. Standard For Summary Judgment.

Summary judgment is appropriate where the record and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *See, Jackson v. Xerox Corp.*, 349 F. Supp. 2d 1119, 1120 (N.D. Ill. 1994) citing Lexington

Insurance Company v. Rugg & Knopp, 165 F.3d 1087, 1090 (7th Cir. 1999); Fed.R.Civ.P. 56 (c).

The Court must construe all facts in the light most favorable to the non-moving party and draw all reasonable and justifiable inferences in favor of that party. **Xerox Corp.**, 349 F.Supp. 2d at 1020, citing **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L. Ed. 2d 202 (1986).

B. OCS's Burden of Proof on Damages

Under Illinois law, OCS has the responsibility of proving its damages to a reasonable degree of certainty. **Sheetz v. Morgan**, 98 Ill. App. 3d 794, 801, 424 N.E. 2d 867, 872 (Ill. App. 1981). Where damages are susceptible to proof in dollars and cents, direct and tangible proof must be offered supporting the claim for damages. *See, e.g.,* **Rosos Litho Supply Corporation v. Hansen**, 123 Ill. App. 3d 290, 300, 462 N.E. 2d 566, 574 (Ill. App. 1984); **Shetz**, 98 Ill. App. 3d at 801, 424 N.E. 2d at 872. Evidence as to damages must not be remote, speculative, or uncertain. **Id.** Where a party establishes a right to damages, but fails to prove damages through direct and tangible evidence, only nominal damages are recoverable. *See, Estate of Halas* 209 Ill. App. 3d 333, 349, 568 N.E. 2d 170, 181 (Ill. App. 1991).

C. OCS Unable to Establish the Existence of Any Unpaid Principle or Interest on the Promissory Notes

Q. The promissory notes [at issue] here. Can you tell me how much is owed on the promissory notes?

A. No, I can't specific to the promissory notes specifically. I can just --

Testimony of Anthony Paternostro at P.51, L.19-23 from the transcript of his deposition (Statement ¶7, Exhibit "B").

Throughout the relationship between MICHAELS and OCS, OCS exercised complete control and dominion over the collection of MICHAELS' revenues, the payment of MICHAELS' expenses (including the subject promissory notes) and the preparation and maintenance of records pertaining to the collection of revenues, payment of expenses, and disbursement of profits. (BSA ¶¶2.10, 2.11, and 2.12).²

The financial records prepared and maintained by OCS do not reflect the existence of any promissory notes. (Statement ¶3). However, OCS's Rule 30(b)(6) witness, Mr. Paternostro, testified that the subject promissory notes are in fact included in the OCS statements under "Active Account Balances" in the line item titled "startup losses and construction costs." (Statement ¶4). According to OCS's records, from the inception of the parties' relationship through September 30, 1997, OCS advanced \$538,191.00 to MICHAELS for startup losses and construction costs, of which \$193,224.00 is represented by the subject promissory notes. As of September 30, 1997, the amount of funds advanced for startup losses and construction costs, plus accrued interest on the startup and construction debt, totaled \$1,121,061.00. (Statement ¶5).

By January 1, 1998, MICHAELS' practice was earning profits sufficient to commence repayment of the startup losses and construction debt, and MICHAELS had repaid all non-interest bearing advances (i.e., compensation advances). (Statement ¶12 and 13). Accordingly, pursuant to the terms of the subject promissory notes, the 60-month repayment period commenced on January 1, 1998 (with the last payment due on December 1, 2002). (Statement ¶1, Exhibit "A").

² A copy of the BSA was previously filed with the Court on June 9, 2005, and was authenticated by Dr. Michaels in her affidavit dated June 8, 2005, Exhibits "A" and "B" to Michaels' Local Rule 56.1 Statement in Support of Motion for Partial Summary Judgment.

During the deposition of Mr. Paternostro, the witness designated as having the most knowledge, basic inquiries were made concerning:

1. the applicable interest rates for the promissory notes;

ANSWER: Unknown.

2. whether the interest rates were fixed or variable during the term of the promissory notes;

ANSWER: Unknown.

3. the monthly amortization amounts and amortization schedules for each of the promissory notes;

ANSWER: Unknown and undetermined as to whether anyone at OCA ever prepared an amortization schedule.

4. the amount of payments made on principal and interest for each of the promissory notes;

ANSWER: Unknown.

5. what, if any, sums remain due and owing on each of the promissory notes.

ANSWER: Unknown.

Specifically, Mr. Paternostro testified:

P.43, L.22 – P.44, L5

Q. What was the amortization -- the monthly payment for the promissory note of June 30, 1995, Exhibit 79? Can you tell me?

A. No.

Q. Can you tell me the amortization amount for any of the promissory notes at issue in this matter?

A. No.

P.45, L.11-20

Q. So as of January 1, 1998 assuming that there was sufficient operating margin, the repayments of the promissory notes could commence?

A. They could.

Q. Okay. But you don't know what the amortization amount is for any of those notes, do you?

A. No, I didn't calculate that.

Q. Has anyone at OCA ever calculated that?

A. I don't know.³

P.47, L.6-17

Q. Okay. Would the prime rate change from year to year?

A. It doesn't say that.

Q. Okay. So should we assume then that it's the prime rate as of the date of the interest?

A. I don't normally assume.

Q. Okay. Who at OCA would know?

A. Would know what?

³ Mr. Paternostro was OCS's Rule 30(b)(6) witness and, as such, was required to review OCS's corporate records necessary for him to testify to all facts known or reasonably available to OCA on the requested subject matter. (Statement ¶ 2).

Q. Whether the prime rate is one fixed sum as of the date of the notes or it changes from year to year?

A. I don't know.⁴

P.65, L.22 – P.67, L.23

Q. So the question becomes do you know if any payment has been made by Dr. Michaels on the promissory notes, the five notes?

A. I haven't seen any direct evidence of that.

Q. Well, what direct evidence would you look for?

A. For specific payments upon a promissory note?

Q. Yes.

A. I would look for a payment that equals the exact amount if you were to calculate an amortization amount for the note.

Q. But you haven't, and you don't know what the amortization amount is. So, therefore, you don't know if any payments were made, do you?

A. Correct, but I haven't seen any payments separate and apart from payments made through the financial statements.

Q. Right, and the promissory notes are included in -- aren't they, in your startup losses and construction costs that we were looking at a moment ago on Exhibit 59, correct?

A. Let me look at Exhibit 59, again.

Q. Sure.

A. Okay. I have 59.

⁴ See footnote 2.

Q. Go to page 3 of 4 and active account balances. We have startup losses and construction costs of 160,274.21, correct?

A. For the third quarter of 2002, that's correct.

Q. That would indicate that payments had been made on the outstanding startup losses that were previously in the records, Exhibits 1 through 30, correct?

A. Well, the Abbey Road statements such as the Exhibit 59 show that the practice made payments on the total debt owed by the practice which includes --

Q. Promissory notes?

A. -- startup losses and fixed assets.

Q. Which subsumes the promissory notes, correct?

A. The promissory note amounts are a portion of the startup losses of the practice.

Q. Okay. And so when payments are made to reduce that debt, that startup loss debt, then some of those payments would have to have been applied to the promissory notes, correct?

A. I don't know how they were applied.⁵

P.110, L.3 – P.111, L.17

Q. Okay. How did OCA account for the payments on the promissory notes in its general course of business?

A. As far as I can see, we did not -- account for payments on -- I am assuming you are talking about promissory notes in Exhibit -- the 70s. I have not seen any accounting specifically for those notes.

Q. Okay. They are just blended in with the startup losses?

⁵ See footnote 2.

A. *Well, the promissory note balances are a component of the total startup losses, and the total startup losses are a component of the total debt amount which are tracked in both the spreadsheets and Abbey Road.*

Q. *Right. And those totals there have been payments made on that total number, correct?*

A. *Dr. Michaels' practice did make payments on the total debt amounts throughout the course of her affiliation with us.*

Q. *Which is composed of the promissory notes, other cash advances?*

A. *The debt is composed of startup losses, fixed asset payments, and that's it. Of course, we are talking about the interest bearing debt.*

Q. *Right. The non-interest bearing was the compensation advances which have been paid back?*

A. *Correct.*

Q. *So the total debt is the startup losses and the fixed asset payments, correct?*

A. *The debt comprised of startup losses and fixed asset expenses.*

P.112, L.7-15

Q. *Okay. All right. As payments came in for the startup losses, there was no internal allocation by OCA as to what went to the promissory notes or to other moneys, correct?*

A. *Payments were made on the debt amounts. It's not clear to me what those payments were paying down specifically.⁶*

(Statement ¶¶4, 7-14).

⁶ See footnote 2.

MICHAELS is confounded by OCS's inability to provide answers to the foregoing basic inquiries. Preparing and maintaining amortization schedules and accounting for principal and interest paid on promissory notes are not complex accounting functions. That a large, publicly held company is unable to perform such procedures and provide direct and tangible proof of monies due and owing is mystifying. Regardless of the reasons behind OCS's failure to provide direct and tangible proof of the monies it alleges are due and owing under the subject promissory notes, its inability to do so is fatal to OCS's claims under Counts V and VI of the Amended Complaint.

D. Promissory Notes Repaid in Full

As Mr. Paternostro's testimony exposes, it is impossible for anyone to definitively determine from OCS's accounting records the monies repaid by MICHAELS and the application of those monies to the subject promissory notes and other debt. However, OCS's records do indicate that MICHAELS' total debt for startup losses and construction costs (including accrued interest) was reduced from a high of \$1,121,061.00, as of September 30, 1997, to \$74,327.10, as of December 31, 2003.⁷ (Statement ¶6).

Pursuant to the terms of the promissory notes, principal and interest payments were to be amortized over 60 months (5 years), commencing "after payment of non-interest bearing cash

⁷ Mr. Paternostro contended in his deposition that the \$19,006.22 debt reduction payment credited to MICHAELS for the fourth quarter 2003 was an automated book entry and that those funds were not actually received by OCS. (Paternostro deposition at p.76, l.3 to p.77, l.9). In fact, OCS received funds exceeding the credited debt payment but hid the funds in an expense entry, while also withholding MICHAELS profits for the third quarter 2003 (\$8,616.75). Specifically, OCS's quarterly statement shows an expense of \$44,046.36 for "clinical supplies" from July 1, 2003 through September 5, 2003 (only 2/3rds of the quarter). However, MICHAELS' average clinical supply expense for the three prior full quarters (October 1, 2002-June 30, 2003) was \$14,765.44, nearly \$30,000.00 less than the amount recorded by OCS for the third quarter. (Statement ¶15, Exhibit "F").

advances [compensation advances] and upon attainment of a net operating margin sufficient to repay these advances.” (Statement ¶ 1, Exhibit “A”). According to Mr. Paternostro, the conditions precedent to the repayment of the promissory notes were satisfied by December 31, 1997. (Statement ¶12 and 13). In fact, MICHAELS began repaying the startup and construction debt as of January 1, 1998. (Statement ¶6, Exhibits “D” and “E”). Assuming OCS applied MICHAELS payments pursuant to the terms of the promissory notes, the sums due thereunder were fully repaid by December 2002.

Of the principal sum of \$538,191.000 advanced by OCS for startup losses and construction costs, only \$193,224.00 is represented by the subject promissory notes. (Statement ¶1). As MICHAELS made principal repayments far exceeding the total principal amount of the promissory notes (along with hundreds of thousands of dollars in accrued interest), and OCS is unable to specifically account for or differentiate between the promissory notes and other cash advances made to MICHAELS, OCS cannot satisfy its burden of proving the amounts it contends remain due and payable on the promissory notes.

III. CONCLUSION

OCS is unable to establish by direct and tangible proof the existence of any default on the subject promissory notes, or whether any monies remain due and payable thereunder. As OCS has failed to satisfy its burden of proof on the issue of damages, MICHAELS is entitled to judgment as a matter of law.

Respectfully submitted,

By: _____
One of the Attorneys for Defendants
CHRISTINE MICHAELS, D.D.S., P.C. and
CHRISTINE MICHAELS, D.D.S.

Richard M. Goldstein
Fla. Bar No. 197319
Keith R. Gaudio
Fla. Bar No. 034436
GOLDSTEIN, TANEN & TRENCH, P.A.
One Biscayne Tower, Suite 3700
Two South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 374-3250
Facsimile: (305) 374-7632
Counsel for Defendants

Stacey Feeley Cavanagh, (ARDC#6229225)
UNGARETTI & HARRIS LLP
3500 Three First National Plaza
Chicago, IL 60602-4283
Telephone No.: (312) 977-4400
Co-Counsel for Defendants

CERTIFICATE OF SERVICE

I, Stacey Feeley Cavanagh, hereby certify that a copy of **Memorandum of Law in Support of Defendants' Motion for Final Summary Judgment on Damages** was served upon the following counsel of record:

Peter F. Lovato, III, Esquire
Boundas, Skarzynski, Walsh & Black, LLC
200 East Randolph Drive
Suite 7200
Chicago, IL 60601

by having same delivered via regular U.S. mail, on or before the hour of 5:00 p.m. on this _____ day of March, 2006.

By: _____
STACEY FEELEY CAVANAGH

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ORTHODONTIC CENTERS OF ILLINOIS, INC.,)	
)	CASE NO. 04C-6852
)	
Plaintiff,)	Judge Milton I. Shadur/
)	Magistrate Sidney I. Schenkier
v.)	
)	
CHRISTINE MICHAELS, D.D.S., P.C., and)	
CHRISTINE MICHAELS, D.D.S.,)	
)	
Defendants.)	
)	

**DEFENDANTS' LOCAL RULE 56.1 STATEMENT IN SUPPORT OF THEIR MOTION
FOR FINAL SUMMARY JUDGMENT ON DAMAGES**

Defendants, CHRISTINE MICHAELS, D.D.S., P.C., and CHRISTINE MICHAELS, D.D.S. (collectively "Defendants"), herein file their statement of undisputed material facts in support of their Motion for Final Summary Judgment on Damages, pursuant to Local Rule 56.1 of the United States District Court for the Northern District of Illinois, as follows:

1. Plaintiff, ORTHODONTIC CENTERS OF ILLINOIS, INC. ("OCS") owns and holds five Promissory Notes in the total amount of \$193,224.00 executed by Defendants on or around June 30, 1996. (OCS Amended Complaint ¶¶ 15 and 17). Copies of the five promissory notes are attached hereto as Composite Exhibit "A".

2. Plaintiff produced Anthony Paternostro, its senior vice-president of professional development for a deposition on what amounts, if any, remain due and payable on the subject

Promissory Notes. (Deposition of Anthony Paternostro at p.3-4, Exhibit “**B**” and Second Notice of Taking Deposition Duces Tecum, Exhibit “**C**”).

3. The financial statements and other accounting records prepared and maintained by Plaintiff for Defendants do not reflect the existence of any promissory notes. (Exhibit “**D**”).

4. Mr. Paternostro testified that the subject promissory notes are included in the line item titled “startup losses and construction costs.” (Deposition of Anthony Paternostro at pp.66-67, 110-111, Exhibit “**B**”).

5. For the Rule 30(b)(6) deposition of Plaintiff, Mr. Paternostro prepared a spreadsheet summarizing Defendants’ financials which reflect advances by Plaintiff totaling \$538,191.00 for startup losses and construction, (inclusive of the \$193,224.000 represented by the five promissory notes) which, with accrued interest, totaled \$1,121,061.00 as of September 30, 1997. (Exhibit “**E**”).

6. According to the financial statements prepared by Plaintiff, Defendants’ total debt for startup losses and construction costs was reduced from \$1,121,061.00, as of September 30, 1997, to \$74,327.10, as of December 31, 2003. (Exhibit “**D**” and “**E**”).

7. Based upon Plaintiff’s own records, Mr. Paternostro was unable to identify the sums due and owing on the five Promissory Notes, individually or collectively. (Deposition of Anthony Paternostro at p.51, 68, 110-112, Exhibit “**B**”).

8. After review of financial records prepared and maintained by Plaintiff, Mr. Paternostro was unable to account for any payments made upon the Promissory Notes. (Deposition of Anthony Paternostro at p. 65-67, 110-112, Exhibit “**B**”).

9. After review of financial records prepared and maintained by Plaintiff, Mr. Paternostro was unable to identify the applicable interest rate on the Promissory Notes. (Deposition of Anthony Paternostro at p. 45-47, Exhibit “**B**”).

10. After review of financial records prepared and maintained by Plaintiff, Mr. Paternostro was unable to advise whether the interest rate on the Promissory Notes was fixed or variable. (Deposition of Anthony Paternostro at p. 45-47, Exhibit “B”).

11. After review of financial records prepared and maintained by Plaintiff, Mr. Paternostro was unable to identify the monthly amortization amount for any of the Promissory Notes. (Deposition of Anthony Paternostro at p. 43-45, Exhibit “B”).

12. As of December 31, 1997, Defendants had repaid all non-interest bearing advances (i.e., compensation advances). (Deposition of Anthony Paternostro at pp. 43-45, Exhibit “B”).

13. As of December 31, 1997, Defendants had a net operating margin sufficient to make debt payments. (Deposition of Anthony Paternostro at p. 45, Exhibit “B”).

14. Mr. Paternostro was unaware of no other representative of Plaintiff who would have greater knowledge than him concerning the promissory notes and the payment thereof. (Deposition of Anthony Paternostro at p.112, Exhibit “B”).

15. From October 1, 2002 through June 30, 2003 Defendants’ average expense for “clinical supplies” was \$14,765.44. However, for the period from July 1, 2003 through September 5, 2003, when Defendants stopped depositing revenues and stopped utilizing Plaintiff’s services, Plaintiff’s prepared statement shows a charge of \$44,046.36 for “clinical supplies.” (Exhibit “F”).

Respectfully submitted,

By: _____
One of the Attorneys for Defendants
CHRISTINE MICHAELS, D.D.S., P.C. and
CHRISTINE MICHAELS, D.D.S.

Richard M. Goldstein
Fla. Bar No. 197319
Keith R. Gaudio

Fla. Bar No. 034436
GOLDSTEIN, TANEN & TRENCH, P.A.
One Biscayne Tower, Suite 3700
Two South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 374-3250
Counsel for Defendants

Stacey Feeley Cavanagh, (ARDC#6229225)
UNGARETTI & HARRIS LLP
3500 Three First National Plaza
Chicago, IL 60602-4283
Telephone No.: (312) 977-4400
Co-Counsel for Defendants

CERTIFICATE OF SERVICE

I, Stacey Feeley Cavanagh, hereby certify that a copy of **Defendants' Local Rule 56.1 Statement in Support of Their Motion for Final Summary Judgment on Damages** was served upon the following counsel of record:

Peter F. Lovato, III, Esquire
Boundas, Skarzynski, Walsh & Black, LLC
200 East Randolph Drive
Suite 7200
Chicago, IL 60601

by having same delivered via regular U.S. mail, on or before the hour of 5:00 p.m. on this _____ day of March, 2006.

By: _____
STACEY FEELEY CAVANAGH