

WOMACK, LANDIS, PHELPS & McNEILL

A Professional Association
Attorneys at Law
Century Center
301 West Washington
P.O. Box 3077
Jonesboro, Arkansas 72403

Chuck Gschwend
Of Counsel

Tom D. Womack
David Landis
John V. Phelps
Paul McNeill
Richard Lusby
Jeffrey W. Puryear
Mark Mayfield
J. Rogers McNeil
Dustin H. Jones
J. Nicholas Livers
Raney E. Coleman
Jared S. Woodard
Serena T. Green
Jeffrey Scriber
Ryan M. Wilson

www.wlpmlaw.com

Telephone (870) 932-0900
Facsimile (870) 932-2553

jphelps@wlpmlaw.com

November 10, 2008

VIA E-MAIL

Judge William R. Wilson, Jr.
D444 Richard Sheppard Arnold U.S. Courthouse
500 W. Capitol Ave.
Little Rock, AR 72201-3325

Re: Otto Dental Supply, Inc. v. Kerr Corporation
U. S. District Court, Eastern District of Arkansas,
Western Division No. 4:06cv01610GH

Dear Judge Wilson:

I have just returned to the office and read Tony Wilcox's letter to Court of last Friday.

Much of Tony's argument concerns plaintiff's objection to being terminated for reasons which plaintiff claims violate the Arkansas Franchise Practices Act. (Whether there was a franchise is a factual dispute.) However, neither that Act, nor the Common Law supports a claim based upon "fraudulent termination."

As stated in our letter of August 29, 2008, plaintiff's case is one for wrongful termination and the motive for the termination, unless offered as a defense, is of no consequence.

Finally, Tony alleges that Kerr has engaged in a systematic effort to prevent Best Buy Dental from obtaining Kerr products for resale because Best Buy Dental resells the products at a price lower than that of Kerr's other customers. While not accurate, this has nothing to do with the right of Kerr to terminate a non-franchise relationship.

Otto did not rely upon any alleged subterfuge and there is no actionable fraud concerning the circumstances of his termination.

Most respectfully yours,

WOMACK, LANDIS, PHELPS & McNEILL



J. V. Phelps

JVP/kq

cc: Tony Wilcox (via e-mail)
Brandon Lacy (via e-mail)
William Clay Brazil (via e-mail)