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U.S. DISTRICT COURT
DISTRICT OF IDAHO
Pocatello, Idaho
CLERK OF COURT
JULY 15 2003

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**
The Honorable Larry M. Boyle

POCATELLO DENTAL GROUP, P.C.,
an Idaho Professional Corporation,

Plaintiff,

vs.

INTERDENT SERVICE
CORPORATION, a Washington
Corporation,

Defendant,

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 GOODLIFFE; individually;

*Counterdefendant and
Third-party Defendants.*

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

**ANSWER TO
THIRD-PARTY COMPLAINT OF
DWIGHT G. ROMRIELL,
GREGORY ROMRIELL,
ERROL ORMOND, and
ARNOLD GOODLIFFE
AND
JURY DEMAND**

**ANSWER TO THIRD-PARTY COMPLAINT (Romriell, Romriell, Ormond & Goodliffe)
AND JURY DEMAND — Page 1**

Pocatello Dental Group v. InterDent

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Third-party Defendants Dwight G. and Gregory Romriell, Errol Ormond, and Arnold Goodliffe answer Defendant InterDent's (herein "ISC") Third-party Complaint (originally improperly designated as a counterclaim under Rule 13(a) *Federal Rules of Civil Procedure*) as follows:

FIRST DEFENSE

1. The Third-Party Complaint and each Count thereof fail to state claims upon which relief can be granted; these answering Third-party Defendants put Defendant to its proof.

SECOND DEFENSE

2. The Third-Party Complaint and each Count thereof fail to state claims upon which relief can be granted against these answering Third-party Defendants.

THIRD DEFENSE

3. The complaints and consequences of which Defendant InterDent complains are a direct result of its unwillingness, incapacity, and indifference to proper professional management and priority concern for patients while diverting away from the dental group over 60% of the money produced by the efforts of the practicing physicians.

FOURTH DEFENSE

4. Some of the conduct of which Defendant ISC complains is privileged, immune, and otherwise not actionable.

FIFTH DEFENSE

5. The claims of Defendant ISC are barred by the doctrines of laches and unclean hands.

SIXTH DEFENSE

6. Any equitable claims of Defendant ISC are barred by its own misconduct and failure to do equity.

SEVENTH DEFENSE

7. Any action for rescission is untimely and waived.

EIGHTH DEFENSE

8. The conduct and acts and omissions of Defendant InterDent of which it seeks to take advantage were unreasonable or unlawful.

NINTH DEFENSE

9. Defendant ISC has failed to reasonably conduct itself so as to avoid or mitigate any damage and has otherwise unreasonably conducted itself so as to incur losses and expense that in the conduct of reasonable practices were avoidable.

TENTH DEFENSE

10. These answering defendants deny each and every allegation of the Third Party Complaint not specifically admitted herein or not specifically applying to them.

ELEVENTH DEFENSE

Answer to "Parties, Jurisdiction and Venue"

11. Answering paragraph 1 of the Third-Party Complaint, these answering Third-party Defendants deny that a Third-party Complaint can be filed pursuant to Rule 13(a) of the *Federal Rules of Civil Procedure*.

12. Answering paragraph 2 of the Third-Party Complaint, these answering Third-party Defendants admit that Defendant InterDent Service Corporation is a Washington corporation registered in Idaho.

13. Answering paragraph 3 of the Third-Party Complaint, these answering Third-party Defendants admit that Pocatello Dental Group is an Idaho professional corporation with its principal place of business in the Pine Ridge Mall in Chubbuck, Idaho.

14. Answering paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Third-Party Complaint, these answering Third-party Defendants admit that the individuals named were, and are, residents of Idaho.

15. Answering paragraphs 11 and 12 of the Third-Party Complaint, these answering Third-party Defendants admit the amount in controversy is in excess of \$75,000.00 and that venue in Pocatello is appropriate.

Answer to "General Allegations"

16. Answering paragraphs 13 and 14 of the Third-Party Complaint, these answering Third-party Defendants admit that Defendant ISC holds itself out as providing

management services and that there was a prior relationship with GMS Dental Group (herein "GMS").

17. Answering paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of the Third-Party Complaint, these answering Third-party Defendants deny that anything was attached to the papers served on them designated as "Exhibit 1" or otherwise and therefore deny all allegations of those paragraphs other than to admit that if a document had been attached, the document would be the best evidence of what it provided.

18. These answering Third-party Defendants deny the allegations of paragraph 30 of the Third-Party Complaint.

19. Answering paragraph 31 of the Third-Party Complaint, these answering Third-party Defendants admit that discounts have been given where appropriate within their professional judgment but deny the other allegations and conclusions therein.

20. Answering paragraph 32 of the Third-Party Complaint, these answering Third-party Defendants admit that any documents referenced by Defendant ISC are the best evidence of their content, but deny the other allegations therein.

21. Answering paragraph 33 of the Third-Party Complaint, these answering Third-party Defendants deny that Dwight G. Romriell ever gave notice that he intended to leave professional practice.

22. Answering paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of the Third-Party Complaint, these answering Third-party Defendants admit that Pocatello

Dental Group undertook to secure an agreement with Dwight G. Romriell and affirmatively allege that such was in the best interests of patients and in the best economic and professional interests of Defendant ISC and that Defendant ISC unreasonably, and contrary to even its own economic interests, sought to frustrate any continuing professional relationship with Dwight G. Romriell or otherwise operate Defendant ISC reasonably and deny the other allegations and conclusions therein.

23. Answering paragraph 45 of the Third-Party Complaint, these answering Third-party Defendants admit that Dr. Misner and Ivar Chhina had conversations.

24. Answering paragraph 46 of the Third-Party Complaint, these answering Third-party Defendants admit that a meritorious Temporary Restraining Order was obtained on October 10, 2003.

25. Answering paragraphs 47, 48, 49, and 50 of the Third-Party Complaint, these answering Third-party Defendants admit that the meritorious Temporary Restraining was appropriately served but deny that the TRO has impaired Defendant ISC from doing anything that was in the interest of patients, professionalism, or reasonable management.

26. Answering paragraphs 51, 52, 53, and 54 of the Third-Party Complaint, these answering Third-party Defendants deny Defendant ISC has any good faith "information and belief" that any revenues are being improperly diverted, deny the implication that Pocatello Dental Group would be precluded by law or agreement from

having a bank account or post office box, and deny the other allegations and conclusions therein.

27. Answering paragraphs 55, 56, 57, 58, and 59 of the Third-Party Complaint, these answering Third-party Defendants admit that Dwight G. Romriell currently has his own independent dental practice and that in such professional practice he treats patients and otherwise exercises his specialty skills and training as relating to temporomandibular and craniofacial disorders, that such professional practice was properly and lawfully established, but deny the other allegations and conclusions therein.

28. Answering paragraphs 60, 61, 62, and 63 of the Third-Party Complaint, these answering Third-party Defendants admit that any documents referenced by Defendant ISC are the best evidence of their content but deny the other allegations and conclusions therein.

Answer to "First Claim For Relief"

29. Answering paragraph 64 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 63 of the Third-Party Complaint.

30. These answering Third-party Defendants deny the allegations of paragraphs 65 and 66 the Third-Party Complaint.

Answer to "Second Claim For Relief"

31. Answering paragraph 67 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 66 of the Third-Party Complaint.

32. Answering paragraphs 68, 69, and 70 of the Third-Party Complaint, these answering Third-party Defendants admit that under Idaho law there is as part of every contract an implied covenant of good faith and fair dealing but deny that they have breached any such covenant for which Defendant ISC has any right to complain and affirmatively allege that Defendant ISC's overall conduct has not conformed with good faith, reasonable conduct, or with a priority to the interests and safety of patients, and deny the other allegations and conclusions therein.

Answer to "Third Claim For Relief"

33. Answering paragraph 71 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 70 of the Third-Party Complaint.

34. Answering paragraphs 72, 73, and 74 of the Third-Party Complaint, these answering Third-party Defendants admit that good faith complaints to the Idaho Board of Dentistry have been made but deny that such is an abuse of process or that Defendant ISC has sustained any actionable damages from such, affirmatively allege that Defendant ISC's conduct has in fact impaired and interfered with the physician-patient relationship, and deny the other allegations and conclusions therein.

Answer to "Fourth Claim For Relief"

35. Answering paragraph 75 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 74 of the Third-Party Complaint.

36. Answering paragraphs 76, 77, 78, 79, 80, 81, and 82 of the Third-Party Complaint, these answering Third-party Defendants deny that any of the concerns of which Defendant ISC complains were a result of Defendant ISC in fact placing any meaningful trust and confidence in the professionals of the Pocatello Dental Group or that Defendant ISC was ever in a position where it did anything to its detriment as a result of reposing any "special trust and confidence" in the professionals at the Pocatello Dental Group, or that Defendant ISC undertook to meaningfully listen to or confer with them, and deny the other allegations and conclusions therein.

Answer to "Fifth Claim For Relief"

37. Answering paragraph 83 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 82 of the Third-Party Complaint.

38. Answering paragraphs 84, 85, 86, 87, 88, and 89 of the Third-Party Complaint, these answering Third-party Defendants admit that all professionals of the Pocatello Dental Group were aware of a management contract but deny the other allegations and conclusions therein.

Answer to "Sixth Claim For Relief"

39. Answering paragraph 90 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 89 of the Third-Party Complaint.

40. These Answering Third-party Defendants deny the allegations and conclusions of paragraphs 91, 92, 93, 94, 95, 96, and 97 of the Third-Party Complaint.

Answer to "Seventh Claim For Relief"

41. Answering paragraph 98 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 97 of the Third-Party Complaint.

42. Answering paragraphs 99 and 100 of the Third-Party Complaint, these answering Third-party Defendants admit that some terms of an agreement are material and others are not, admit that Defendant ISC claims as alleged, but denies the other allegations and conclusions therein.

Answer to "Eighth Claim For Relief"

43. Answering paragraph 101 of the Third-Party Complaint, these answering Third-party Defendants incorporate by reference their answers to paragraphs 1 through 100 of the Third-Party Complaint.

44. Answering paragraphs 102, 103, 104, and 105 of the Third-Party Complaint, these answering Third-party Defendants admit that Defendant ISC seeks the declaratory relief as alleged but denies that it is entitled to such, and denies each and

every other allegation of these paragraphs and all other paragraphs of the Third-Party Complaint not specifically admitted herein.

Jury Demand

These Answering Third-party Defendants demand jury trial on all issues.

WHEREFORE these answering Third-party Defendants pray that Defendant ISC's Third-Party Complaint, initially improperly designated as a counterclaim, be dismissed with prejudice and that they have their costs and attorney fees pursuant to *Idaho Code* § 12-120(3) and 12-121 and 28 U.S.C. § 1927.

DATED this 6th day of February, 2004.

LOWELL N. HAWKES, CHARTERED



LOWELL N. HAWKES

CERTIFICATE OF SERVICE

I certify that on this 6th day of February, 2004, I sent by fax a copy of the foregoing to counsel for the parties as shown below:

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