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**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

**MEMORANDUM OF
THIRD-PARTY DEFENDANTS
DWIGHT G. ROMRIELL,
GREGORY ROMRIELL,
ERROL ORMOND, and
ARNOLD GOODLIFFE
OPPOSING INTERDENT
MOTION TO DISMISS
AMENDED COUNTERCLAIMS**

Procedural Context

Defendant InterDent has filed a Rule 12 Motion to Dismiss the June 29, 2004 Amended Counterclaims of Third-Party Defendants Romriell, Ormond and Goodliffe or for a more definite statement.

The Court has pending before it InterDent's Motion for Temporary Restraining Order against Dr. Misner for which there was a telephone hearing on June 28, 2004. That hearing allowed for supplemental filings, including the complete depositions of Dr. Larry Bybee and Dr. Gregory Romriell. Those supplemental filings provided the Court substantial detail as to the specific conduct of InterDent that has damaged the individual dentists and Pocatello Dental Group and damaged their practices.

The Amended Counterclaims

The Amended Counterclaims of these Third-party Defendants at issue in InterDent's Motion to Dismiss state:

54. The conduct of *Defendant InterDent* in its dealings with the professionals and patients at the Pocatello Dental Group has been hostile, tactical, unprofessional, defiant, recklessly indifferent, and in *conscious disregard to the professional standards and good faith for which the Pocatello Dental Group had previously and historically been known and to which Defendant InterDent was contractually and professionally obligated to respect and honor.*

55. Among other things, Defendant InterDent has *subordinated the interests of patients and professionals* and the *quality of practice* to which the Pocatello Dental Group had previously adhered, to its wrongful financial interests *contrary to the historical practice*, representations, contractual obligations, and promises upon which the prior management relationship was originally, historically, and professionally based.

56. The conduct of Defendant InterDent and its agents has, among other things, defiantly announced that *it would give no credence to, nor honor, its material contractual obligations* where different from what it desired its contractual obligations to be while knowing that the impact of such was to *degrade prior standards* and the *prior quality of professional and patient relationships*.

57. InterDent has further repeatedly *refused to make full financial disclosure and mail accounting* to which the parties were entitled.

58. The overall *net effect* of Defendant InterDent's wrongful and calculated conduct is that *the essence of the material purposes and reasons for the management contract and the element of good faith and fair dealing in the relationship cease to exist* to the professional detriment of the professionals, patients, and staff of the Pocatello Dental Group.

59. These answering Third-party defendants have been damaged by the wrongful conduct of Defendant InterDent.

The prayer of the Amended Counterclaims

The prayer of the Amended Counterclaims states:

WHEREFORE these answering Third-party Defendants pray that Defendant InterDent's Third-Party Complaint be dismissed with prejudice, that *the Court determine InterDent to have materially degraded and breached its obligations* as set forth above, to *require a full and complete accounting*, and that they have their *damages*, costs, and attorney fees pursuant to *Idaho Code* § 12-120(3) and 12-121 and 28 U.S.C. § 1927 and under their Counterclaim herein and such other relief as the Court determines proper.¹

¹ All emphasis and italics for the quotes cited here are added.

ARGUMENT

THE AMENDED COUNTERCLAIMS PROVIDE ADEQUATE INFORMATION TO GIVE INTERDENT SUFFICIENT NOTICE OF THE COUNTERCLAIMS AT ISSUE

InterDent's Motion to Dismiss complains that Counterclaimants "make certain factual allegations against ISC but do not even attempt to assert or identify a legal theory." **InterDent Motion, p. 2.** In its supporting memorandum InterDent repeats the claim that "the Romriell Defendants do not plead or even hint at a legal theory...."

InterDent Memorandum, p. 2.

InterDent cites no law requiring that a Complaint "plead a legal theory." A pleader does not have to set forth legal theories. *See, Roe v. Aware Woman Center for Choice, Inc.*, 253 F.3d 678, 683-84 (11th Cir. 2001). Under "notice" pleading standards, all Rule 8, FRCP requires is that "a short and plain statement of the claim showing that the pleader is entitled to relief." This Counterclaim meets those criteria.

Given the pending TRO motion before the Court dealing with the failures and unwillingness of InterDent to properly staff and manage the dental practice, it is *not* reasonable to believe that InterDent *genuinely* has "no understanding of what is at issue." It is more reasonable to believe that InterDent has used this motion to delay Answering and having to commit to the inevitable and overwhelming evidence of its reckless indifference to proper dental practice management..

Formerly a "Preeminent" Practice; now "Prehistoric"

A focal — if not *the cornerstone* — issue in this case, is the failure of InterDent to maintain for the dentists at the Pocatello Dental Group the professional — and historically existing — “preeminent” quality practice the Pocatello Dental Group dentists were known for. **Bybee Depo. 60:21-25.** Dr. Bybee called the deteriorated practice under InterDent as “prehistoric” as compared with the “preeminent” practice they historically had. **Bybee Depo. 61:4-22.**

The “un-management” practices of InterDent *directly* impact upon the professionals, patients, and *their individual* incomes so they *personally* are damaged by the wrongful conduct alleged and thus have standing to assert *their own* damages. The indirect-damage shareholder cases cited are not in point.

POINT TWO

INTERDENT ALREADY HAS MORE DETAILED INFORMATION THAN A MORE DEFINITE STATEMENT WOULD PROVIDE

InterDent has asked in the alternative for a more definite statement. Such a statement is appropriate only where drafting a response is “impossible.” *Humphreys v. Nager*, 962 F.Supp 347, 352-353 (EDNY 1997). Such is *not* the case here. Further, motions for a more definite statement are highly disfavored, rarely granted, and granted only sparingly. *See Taylor v. Cox*, 912 F.Supp. 140, 143 (ED Pa. 1995) (“highly disfavored” and “rarely granted”); *Iacampo v. Hasbro, Inc.*, 929 F.Supp. 562, 571 (D. R.I.

1996) (“rarely invoked”); and *Young v. Warner-Jenkinson Co.*, 170 FRD 164, 165-66 (ED Mo. 1996) (“generally disfavored”).

Not a Substitute for Discovery

Motions for a more definite statement are also *not* a substitute for discovery and ordinarily will not be granted where the information sought could be obtained in discovery and discovery is already underway. *Eisenach v. Miller-Dwan Med. Ctr.*, 162 FRD 346 (D. Minn 1995) (discovery obviates need for extended elaboration because discovery can be more efficient than detailed pleading in expediting the pretrial processing of lawsuits); *In re Triple Screw Marine Towing, Inc.*, 1994 WL 151101 (ED La. 1994) (Where discovery is underway, motion practice directed to the pleadings is of little value and the wiser approach is to allow discovery to unearth facts).

Already Existing Substantial Deposition Information

The three depositions taken thus far in this case (Dr. Gregory Romriell, Dr. Larry Bybee, Dr. LeRoy “Russ” Misner) have established that InterDent has discouraged and driven away Pocatello Dental Group dentists by failing to maintain equipment, furnish needed supplies and adequate trained staff, while mistreating and refusing to treat or schedule existing patients. This Court has before it the full depositions of Dr. Gregory Romriell and Dr. Larry Bybee; the depositions were filed incidental to supplemental filings allowed after the telephone hearing relative to the TRO motion as to Dr. Misner.

Just those first two depositions establish great detail that InterDent’s wrongful practices have, step by step, dismembered the formerly prominent multi-

specialty practice of the Pocatello Dental Group so that today there are only three “full-time” (Ernest Sutton, Gregory Romriell, Errol Ormond) dentists and one part-time (Jay Goodliffe) dentist.

Refusal to Train and Provide Staff

When InterDent “filed bankruptcy and started mishandling patients” the lack of commitment to proper management became evident. **Bybee Depo. 20:9-17.** The June 25, 2004 deposition of Dr. Larry Bybee established that he left the Pocatello Dental Group because InterDent refused and failed to train and provide pediatric support staff despite knowing nine months in advance that such would be needed. **Bybee Depo. 36:13-37:25; 39:9-25.**

Because InterDent would not train or furnish adequate staff, Dr. Bybee and Dr. Misner were forced to make the decision “to see fewer patients so the patients we did see would get adequate treatment to receive the standard of care that they are entitled to receive.” **Bybee Depo. 39:3-6.** Ultimately, the reduced, trained staff was not adequate to see patients “more than three days a week.” **Bybee Depo. 42:7-11.** Drs. Misner and Bybee “could not safely treat those children with the staff that we had.” **Bybee Depo. 42:15-16.**

Existing Patients “Locked-Out”

Because of alleged payment issues and “Without consent or approval from a doctor” an initial 875 and then an additional 600 patients “were put on lists” that prohibited the InterDent staff from making appointments for those existing patients.

Bybee Depo. 51:1-10; 56:8-10. InterDent even “canceled appointments already made” by other patients. **Bybee Depo. 55:24-56:1.** InterDent even refused to allow “patients in pain” to be seen because of minuscule payment-balance issues as small as \$8.37. **Bybee Depo. 20:22-21:3.** Even when Dr. Bybee had left the Pocatello Dental Group but offered to InterDent that he would “see kids for free” at PDG, InterDent refused to let those patients be seen. **Bybee Depo. 24:8-17.**

Refusal to Provide Needed Equipment & Materials

InterDent also failed to supply needed and adequate materials such as “Particular alginate materials; impression materials; types of burrs, which were for hand pieces; hand pieces themselves; curing lights; overhead lights; chair, dental chairs.”

Bybee Depo. 51:13-16. Equipment was “antiquated and breaking down.” **Bybee Depo. 59:10.**

Cheap pediatric dental burrs were “snapping and breaking all the time right on the shaft” presenting a “safety issue” for pediatric patients. **Bybee Depo. 59:1-7.** Dr. Bybee complained of the cheap pediatric dental burrs and told InterDent “several times that we need to stop ordering these burrs that are breaking , and then she would do it for a while and then pretty soon we are back with the breaking burrs again.” **Bybee Depo. 68:3-6.**

Thus the dentists were forced to deal with “hand-pieces where the lights didn’t work so we are unable to see as well as you would like to see.” **Bybee Depo. 59:8-**

9. Thus, the deteriorated practice under InterDent management was “No hand picces, no modern sterilization, no curing lights, no fiber optic hand picces.” **Bybee Depo. 63:6-7.**

Concealing Entitled Financial Information

Despite the doctors’ right to know the true financial income and expense status of the business, InteDent does “not allow you to look at an of the books” so the dentists who are producing the income are precluded from any audit or inquiry as to InterDent’s claim on income and expenses. **Bybee Depo. 35:1-17.**

Diversion of Mail

The record herein and the Order by Judge Lodge on February 8, 2004, establishes a clear record that InterDent has wrongfully diverted mail, even personal and professional mail addressed to the individual dentists, to its out-of-state offices. **Bybee Depo. 57:14-25.**

“What would you tell an Inquiring young dentist?”

As a windup to his deposition, Dr. Bybee was asked, based on his “actual experience” and totality of how InterDent had managed the Pocatello Dental Group what he would say to a young inquiring dentist considering affiliation with InterDent:

Q: As of the time of the events that you described prior to your leaving, if another young dentist were to come to you and say, hey, based on your actual experience right now with InterDent what can you tell me about their *commitment to patient safety and patient quality*, what would be your answer to that young inquiring dentist?

A: My response to him would be to *stay totally and completely away from an InterDent office.*

Q: Based on what you had seen there.

A: Yes.

— **Bybee Depo. 60:10-18.**

InterDent's Prior Knowledge

But, even if InterDent only had the deposition of Dr. Gregory Romriell, it had a mountain of information on the counterclaim management-related issues:

InterDent "Devastating Our Practice"

A. *You'd have to be brain dead to not be concerned about your future practice with what InterDent has caused to happen at the Pocatello Dental Group. They have decimated the practice, they have lost us patients, we have lost our specialists, we have lost our equipment, and, yes, I have been looking at alternative options.*

— **G. Romriell Depo. 95:5-12**

* * *

Q. What we are here about today, and I am going to try to limit it to this, is Dr. Misner's noncompete –

A. You asked me earlier about that, and that's the reason that I can't enforce a noncompete, because *they were devastating our practice.*

— **G. Romriell Depo. 44:16-20**

InterDent Failed to Maintain Equipment, Provide Supplies, Train Staff

A. My recollection would be based upon our recent history with InterDent, that the InterDent dilemma would be the main subject of discussion, our *lack of supplies*, our loss of practice share, our *poor state of training for our staff*, the *disrepair of our equipment*, the inability of InterDent to do marketing within our practice, InterDent's inability to share with us the practice numbers that we need to know to evaluate our practice.

Q. Let's talk about loss of practice share. Now, you have had *dentists leave over the past year or two*, correct?

A. Yes, *for the same reasons.*

— **G. Romriell Depo. 39:2-14**

* * *

A. The statement of obligation, I think that we had as a dental group *an obligation through InterDent to provide* Dr.

Snow *with the things that we had agreed upon* when he came into the group, and *through the actions of InterDent, the negative actions of InterDent, we were not able to provide meeting his contract.* So the contract had been violated and he is free to do his choice.

— G. Romriell Depo. 20:25-21:6

* * *

Q. Do you know what their [Dr. Misner & Dr. Bybee] complaints against Pocatello Dental Group are?

A. Yes.

Q. What are they?

A. The *inability to provide trained staff; the inability to provide functioning equipment; the inability to provide adequate supplies and materials; the inability to give them the information and data that they needed* on a practice management basis.

— G. Romriell Depo. 85:19-86:2

* * *

Other Dentists Left For the Same Non-Support Reasons As Did Dr. Snow

Q. Did you do anything to try to stop Dr. Misner from leaving Pocatello Dental?

A. No.

Q. Why not?

A. *For the same reasons I gave you about Dr. Snow.* * * *

A. I was disappointed that he was going to leave.

Q. And the damage to the practice, is that in the form of patients going with him?

A. Yes, and the attractiveness of the Pocatello Dental Group itself. *We became the Pocatello Dental Group, the uniqueness of our office was we had a pediatric dentist, the only one in town. Now we have two and we don't have one in our office.*

Q. And just to summarize, the reasons why you didn't take steps to keep him from leaving were that you thought that *InterDent had done some things that were wrong* and would prevent you from doing anything to stop Dr. Misner from leaving?

A. Yes.

— G. Romriell Depo. 52:19-53:20

* * *

Though Warned, InterDent Failed to Provide Trained Pediatric Staff

Q. There is a statement in about the middle, "*Inadequate trained staff has come to a crisis state* and will cost the company and doctors tens of thousands of dollars due to *lack of action in providing trained personnel.*"

A. Yes.

Q. *Was that true on or about August 14 of 2003?*

A. Yes, I remember that conversation. *That was an ongoing conversation for several months.*

Q. What do you remember about that conversation?

A. I remember *my befuddlement why InterDent would not provide the training and the staff that Dr. Misner needed to produce the dentistry that he was doing.*

— **G. Romriell Depo. 66:3-20 (Referencing Exhibit 7, page 2)**

* * *

Training of Replacement Pediatric Staff Refused by InterDent

A. There is difficulty finding trained personnel. That was the issue. We knew there was a difficulty finding trained personnel, and they needed to bring in extra personnel and train them before the other people left the office. And he knew nine months ahead of time that a couple of the girls would be leaving. So *there was plenty of lead time to get these people trained, but Kevin Webb would not allow him to bring people in to be trained.* So when those people left, he had no trained people to --

— **G. Romriell Depo. 67:18-68:5**

* * *

Q. My question is how do you know that *Kevin Webb prevented the hiring of personnel to be trained?*

A. Barbara said that *Kevin and Bruce Call would not allow them to bring in those people to be trained. And that's the same reason that Dr. Johnson left,* the same scenario.

— **G. Romriell Depo. 68:14-25**

Untrained and Inadequate Pediatric Staff

Q. So they decided to alter their schedules and reduce hours?

A. *So they could adequately take care of the patients,* because they had *untrained staff* or not enough staff to take care of them. Dr. Misner was pretty upset about it because it was going to affect his income, but he didn't know what else to do.

Q. So it wasn't that InterDent refused to schedule patients --

A. Yes, it was. *It was because InterDent refused to provide the staff and provide the trained staff so that they could adequately take care of scheduled patients.* It's not just a matter of scheduling patients and running them through the office, *you have to have trained people to take care of them, and they were not available because of the actions of InterDent.*

— G. Romriell Depo. 69:13-70:3

Without Adequate Pediatric and Orthodontic Staff, Hours Had to Be Reduced

Q. The Exhibit No. 7 goes on to say, "The Pedo Orth. departments will be altering the patient schedules, and *decreasing the hours of Dr. Bybee due to lack of adequately filled staff positions.*"

Q. Did that occur?

A. Yes.

— G. Romriell Depo. 69:1-8

* * *

No Remaining Capacity To Take Care of Dr. Misner's Pediatric Patients

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

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

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

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

— G. Romriell Depo. 54:14-55:4

* * *

Drs. Misner & Bybee: The Only Local Dentists Seeing Medicaid-Medicare Children

Q. Let's talk about family dentists for a moment. Now, it's true, is it not, that Dr. Misner and Dr. Bybee are not the only dentists in Pocatello who see children, right?

A. True. But they are *nearly the only dentists in Pocatello that see the Medicaid-Medicare patients. Most, I don't know of another general dentist that sees them*, and the other pediatric dentist has refused to see them when we have referred them to his office.

— G. Romriell Depo. 23:13-21

* * *

Remaining Dentists Not Trained for Pediatric Dental Patients

A. No, they were all telephone conversations. I apologized for my inability to take care of them. I feel badly for them. *I'm not trained for those special needs.*

— G. Romriell Depo. 30:23-25

* * *

InterDent Directed that Pediatric Patients Be Referred Out

A. Yes. In fact when Dr. Misner had resigned from the Pocatello Dental Group, we were *concerned about the emergency service to those patients*. We did *not* have the capability of working them into our schedule on the basis that they had been coming in. We asked Dr. Misner and Bybee if they would come in on an emergency basis and see these patients. *We made that request of InterDent* and received a rather terse letter back, absolutely not, that they would be -- *all those patients should be referred out* to the dentists in the community. When we referred those children into the community, who had dental emergencies, which means they were in pain, they could not get into another dentist for the most part. So Dr. Bybee made arrangements to go in after

hours at his brother's office so that he could take care of those emergency patients and get them out of pain, because they were not able to find all their needs met among the list that you just read.

— **G. Romriell Depo. 28:7-24**

* * *

InterDent Removed Patient Follow-up Capability

A. If the patient walks in the office, I have access to their chart, and that's all I have. If that patient -- I take care of their emergency. *In the past we have a follow-up system* to follow up with that patient and bring them in as a regular patient, get them into hygiene, diagnose their needs, and take care of them so they didn't have to become an emergency patient again. *With InterDent I don't have that capability. We did have it with GMS, but when InterDent moved the computers to Vancouver, we lost that capability.*

— **G. Romriell Depo. 46:12-21**

* * *

A. *I want to be able to follow-up* with them so that I can take the appropriate care, and *I am being denied that capability.* If I ask for a list of my emergency patients that I had last month, they will not give them to me. There is no way that I can go into the computer, which it was made for, and get that information.

— **G. Romriell Depo. 47:23-48:4**

* * *

InterDent Not Rescheduling Existing Patients

A. It's called a 2028. We weren't supposed to find out about that list because InterDent had *created this file behind our backs.* We were wondering why certain patients weren't coming in, *patients who were in the midst of orthodontic treatment, in the midst of root canal treatment, in the midst of crown and bridge treatment, every aspect of treatments.* And we found that their appointments were being canceled, they weren't showing up for treatment, they weren't finalizing treatment, and I don't remember how we came to find out about the 2028. *The 2028 means that that patient is put on a list that we do not call for 28 years, and they are not allowed*

to come in the office for 28 years. That included many of my family and some of my best friends.

— **G. Romriell Depo. 43:11-25**

* * *

Q. Let me finish the sentence first. Any other reasons why you feel that InterDent is responsible for these patients leaving?

A. I know of and have been given no other reason. I have had *patients* that I have seen at wedding receptions and family gatherings that have come to me and put their arm around me and say, Dr. Romriell, we love you, you are the finest dentist we have ever had, but *we cannot tolerate the way we have been treated by InterDent.*

— **G. Romriell Depo. 41:15-24**

* * *

InterDent Refused To Provide Basic Patient Information

Q. About how many patients did you have last fall?

A. I tried to find that out and *InterDent wouldn't tell me.* I made a request that of the patients that I had, et cetera, and they said they would not give me that information. I requested that information as recently as two days ago, and InterDent, Kevin Webb, *refused to give me that information.*

— **G. Romriell Depo. 45:6-13**

InterDent Has Refused Accounting Information

I have asked for an accounting of new patients, calls and referrals and so forth, and they will not share that information with me.

— **G. Romriell Depo. 29:24-30:1**

* * *

InterDent Refused to Share Needed and Readily-Available Information

A. It would just be a guess; I would guess it would be 3,000, 3,500. But that's one of the problems, that *InterDent refuses to share information with us about our practices that we really need to know.* I have asked for *patient lists*; they won't give me patient lists. I have asked for *patient numbers*, relationship of when a patient comes in for an *emergency*,

how many we get back to take care of their problems on a more permanent basis. I have no idea.

— G. Romriell Depo. 45:16-24

* * *

A. Yes, but who remembers the name of the patient. And with 10,000 charts to go through, that's an absurd way to find the answer to the problem, when it's in the computer and literally *within seconds they could give me that information.*

— G. Romriell Depo. 46:2-6

Discovery Detail Also Furnished From Pocatello Dental Group

InterDent has also had the benefit of Pocatello Dental Group's detailed Answers to Interrogatories served in May that provided an itemization and detail of mis-management issues that impact on the individual dentists and includes at least these claims:

“ (1) PDG asserts that its dentists are **entitled... to its share of the interest that ISC charges and collects** against patients' accounts. * * * (2) ISC has **failed to discharge [Medicaid reimbursement] liabilities** * * * (3) ISC has interfered with PDG's practice of dentistry by **not putting patients back on active recall status** and continuing to put patients who are in a course of treatment on no-recall status. ISC has also refused to acknowledge PDG's reasonable and lawful policies regarding courtesy discounts, in violation of paragraph 4.6(a) of the Management Agreement. * * * In addition, ISC has, since October 3, 2003, rejected PDG's efforts to extend the employment of Dr. Johnson and Dr. Bybee to provide its patients with continued orthodontic and pediatric dental care, respectively. (4) ISC has breached the Management Agreement by **failing to hire and train all non-dentist personnel necessary** for the operation of the practice. As an example [details listed] * * * (5) ISC **has been charging paid time off**, a benefit to its employees, **to PDG's dentists as direct wages.** * * * (6) ISC has **failed to maintain PDG's practice as the preeminent dental practice in the Pocatello** and surrounding area and has **failed to provide and maintain equipment and supplies necessary** for the efficient and effective operation of the PDG practice [details listed]. * * * (7) ISC has **failed to provide an experienced manager for PDG's practice.** [Details listed] * * * (8) ISC has **failed to provide financial statements and accounting records as required** by the Management Agreement. [Details listed]. * * * (9) ISC has **denied PDG access to its patients' records.** Since October 3, 2003, Drs. Dwight Romriell, Greg Romriell and L.R. Misner have requested patient lists, patient flow records

and/or production information from ISC. ISC has refused to turn over those lists, thereby violating the Management Agreement. * * * (10) ISC has violated applicable laws and public policy related to the practice of dentistry. PDG has legal, professional and ethical obligations to ensure that its patients have continuity of treatment and are not abandoned [Details listed]. * * * (11) ISC has breached its obligations under the Management Agreement to properly bill and collect revenues [Details listed]. * * * (13) ISC has **failed to provide PDG with electronic access to its bank account to which its revenues are deposited and its expenses have been paid**. Such conduct not only violates the Management Agreement, it violates a court order entered in U.S. District Court on February 8, 2004 * * *.”

CONCLUSION

There is no good faith basis for InterDent to claim that the individual dentists have no standing to complain of damages they *personally* have incurred. Nor is there a good faith basis to claim it does not know what the mismanagement issues raised in the Amended Counterclaim of these Third-party Defendants.

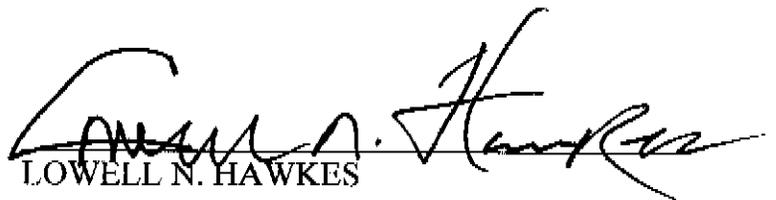
Every deposition taken thus far has provided detailed information on how InterDent has dismantled and broken-down the previously “preeminent” and prestigious dental practice of the Pocatello Dental Group.

InterDent chose to *not* maintain equipment and forego necessary supplies purchases. It chose to *not* train and replace necessary staff — pediatric and otherwise. It broke promises to new dentists about providing top-notch professional support. It secreted access by the dentists to patient and practice information that historically had always been available to the Pocatello Dental Group professionals. It undertook practices that impaired patient follow-up and ongoing care.

The Motion to Dismiss should be denied.

RESPECTFULLY SUBMITTED this 23rd day of July, 2004.

LOWELL N. HAWKES, CHARTERED


LOWELL N. HAWKES

CERTIFICATE OF SERVICE

I certify that on this 23rd day of July, 2004, I sent by fax a copy of the

foregoing to counsel for the parties as shown below:

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