



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,

Third-Party Defendants.

Defendant/third-party plaintiff InterDent Service Corporation ("ISC") respectfully submits the following memorandum in support of its Rule 12 motions against third-party defendants Dwight G. Romriell, Gregory Romriell, Errol Ormond and Arnold Goodliffe's (the "Romriell Defendants") counterclaim.

**I. THE COUNTERCLAIM SHOULD BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(b)(6)**

In the Romriell Defendants' counterclaim dated June 24, 2004, they make a number of accusations that ISC has engaged in activities constituting "wrongful conduct." (Answer ¶ 59.) However, the Romriell Defendants do not plead or even hint at a legal theory under which this allegedly wrongful conduct might translate into a claim against ISC. The reality is that the Romriell Defendants are not parties to the Management Agreement between ISC and their employer, and they have no standing to assert claims against ISC.

The Romriell Defendants are current and former shareholders and employees of plaintiff Pocatello Dental Group ("PDG"). ISC is an independent contractor providing administrative and management services to PDG. (Defendant/Third-Party Plaintiff's Amended and Supplemental Answer, Counterclaims and Third-Party Complaint, Ex. 1 § 3-3.) The Romriell Defendants do not suggest any legal theory under which employees or shareholders of one contracting party have a direct claim against the other contracting party. Indeed, the rule is to the contrary. *See*

MEMORANDUM IN SUPPORT OF THIRD-PARTY PLAINTIFF INTERDENT SERVICE CORPORATION'S RULE 12 MOTIONS AGAINST THIRD-PARTY DEFENDANTS ROMRIELLS, ORMOND AND GOODLIFFE'S COUNTERCLAIM - 2

*Glenn K. Jackson Inc. v. Rue*, 273 F.3d 1192, 1202 n. 4 (9th Cir 2001) (shareholder/employee of law firm has no standing); *Jordan v. Hunter*, 124 Idaho 899, 904, 865 P.2d 990 (Idaho App. 1993) (shareholder has no claim for breach of fiduciary duty to corporation).

The Romriell Defendants' counterclaim should be dismissed under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

## II. FAILING THAT, THE COUNTERCLAIM SHOULD BE MADE MORE DEFINITE

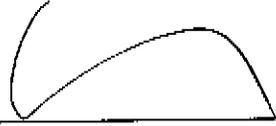
Rule 12(e) requires that ISC at least be given notice of the legal theory on which the Romriell Defendants are proceeding. *Fontana v. Haskin*, 262 F.3d 871, 877 (9th Cir. 2001) (pleading legal theories "makes it more likely the other party will have notice and a better understanding of what is at issue"). If the counterclaim is not dismissed pursuant to Rule 12(b)(6), it should be made more definite and certain pursuant to Rule 12(e).

## III. CONCLUSION

ISC's Rule 12 motions should be granted.

DATED: July 6, 2004.

STOEL RIVES L.L.P.



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MEMORANDUM IN SUPPORT OF THIRD-PARTY PLAINTIFF INTERDENT SERVICE CORPORATION'S RULE 12 MOTIONS AGAINST THIRD-PARTY DEFENDANTS ROMRIELLS, ORMOND AND GOODLIFFE'S COUNTERCLAIM - 3

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Memorandum in Support of Defendant/Third-Party Plaintiff InterDent Service Corporation's Rule 12 Motions Against Third-Party Defendants Romriells, Ormond and Goodliffe's Counterclaim** on the following named persons on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery

to said persons a true copy thereof, contained in a sealed envelope, addressed to said persons at his or her last-known addresses indicated below.

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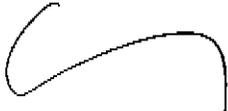
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DATED: July 6, 2004.

  
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