

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

NATIONAL UNION FIRE INSURANCE)	
COMPANY OF PITTSBURGH, PA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:10-cv-00743
)	Judge Campbell
SMALL SMILES HOLDING CO., LLC,)	Magistrate Judge Griffin
)	
Defendant.)	

ANSWER

Defendant, Small Smiles Holding Company, LLC (“SSHC”), as and for its Answer and Affirmative Defenses to the Complaint filed herein by Plaintiff National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) alleges and avers as follows:

1. SSHC admits that National Union’s Complaint purports to be an action for declaratory judgment under 28 U.S.C. §§ 2201 and 2202 seeking a determination of the rights and obligations of the parties under National Union Dentists Liability Policy Number DNU 3375848 (the “Entities Policy”) and National Union Dentists Liability Policy Number DNU6360128 (the “Individuals Policy”) (collectively, the “Policies”).

2. SSHC admits that National Union purports to seek a declaration that it may rescind the Policies, but denies that National Union is entitled to rescission of the Policies and denies the remaining allegations of Paragraph 2.

3. SSHC admits that, in the alternative, National Union purports to seek reformation of the Policies, but denies that it is entitled to reformation of the Policies and denies the remaining allegations of Paragraph 3.

4. SSHC admits that National Union is a corporation organized under the laws of Pennsylvania and is engaged in the business of selling insurance policies. SSHC lacks knowledge and information sufficient to admit or deny the remaining allegations of Paragraph 4 of the Complaint and therefore denies them.

5. SSHC admits that FORBA Holdings, LLC is a limited liability company organized under the laws of Delaware, has its principal place of business in Tennessee, and is a wholly owned subsidiary of Small Smiles Holding Company, LLC. SSHC admits that FORBA Holdings, LLC provides management services to certain dental centers. SSHC denies the remaining allegations of Paragraph 5.

6. SSHC admits that it is entitled to and has demanded defense and indemnity from National Union under the Policies for a putative federal class action as well as various other lawsuits and claims that are covered by the Policies. The remaining allegations of Paragraph 6 of National Union's Complaint contain conclusions of law with respect to which no response is required.

7. SSHC denies the allegations in Paragraph 7, except to admit that it conducts business in Tennessee and that the Policies cover persons, properties, and risks located in Tennessee and other places, and notes that many of the allegations of Paragraph 7 assert conclusions of law with respect to which no response is required.

8. Paragraph 8 of National Union's Complaint contains conclusions of law with respect to which no response is required.

9. Paragraph 9 of National Union's Complaint contains conclusions of law with respect to which no response is required.

10. SSHC admits the allegations of Paragraph 10.

11. SSHC admits that Small Smiles Holding Company, LLC is the first named insured shown in the declarations of the Policies. SSHC further responds that the Policies speak for themselves and that, to the extent Paragraph 11 attempts to paraphrase or summarize the Policies, all such allegations are denied.

12. SSHC admits that FORBA Holdings, LLC is a wholly owned subsidiary of Small Smiles Holding Company, LLC and provides management services to certain dental centers. SSHC denies the remaining allegations in Paragraph 12 of the Complaint.

13. SSHC denies the allegations in Paragraph 13 of the Complaint, except to admit that SSHC obtained the Policies.

14. SSHC admits that the Policies obligate National Union to defend and indemnify SSHC, and any other insureds under the Policies that may be named as defendants, with respect to any claim that triggers the Policies. SSHC further responds that the Policies speak for themselves and that, to the extent Paragraph 14 attempts to paraphrase or summarize the Policies, all such allegations are denied.

15. SSHC admits that American Insurance Company provided dental professional liability insurance to SSHC and other insureds, including but not limited to the Small Smiles Centers, individual dentists employed by the Small Smiles Centers, and subsidiaries of SSHC covering the periods 9-26-06 to 9-26-08 and 12-1-06 to 12-1-08. SSHC denies the remaining allegations in Paragraph 15.

16. SSHC denies that Affinity Insurance Services, Inc. was its insurance broker in July 2008. SSHC lacks information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 16 of the Complaint and therefore denies them.

17. SSHC denies the allegations in Paragraph 17 of the Complaint.

18. SSHC admits that Dentists' Advantage/Affinity informed SSHC that Dentists' Advantage had terminated its contract with American Insurance Company and that, when the SSHC policies were up for renewal on 09/26/2008, Dentists' Advantage would be offering SSHC the renewal terms with National Union. SSHC denies the remaining allegations in Paragraph 18 of the Complaint.

19. SSHC admits that at all times relevant to the claims in this case, Affinity served as National Union's agent and that Affinity was authorized to underwrite and issue dental professional liability insurance policies for National Union through the Dentist's Advantage program, including the Policies issued to SSHC. SSHC lacks information sufficient to admit or deny the remaining allegations in Paragraph 19 and therefore denies them.

20. SSHC denies the allegations in Paragraph 20 of the Complaint.

21. SSHC denies the allegations in Paragraph 21 of the Complaint.

22. SSHC denies the allegations asserted in the unnumbered headings under "C" and "C.i." SSHC admits the allegations in paragraph 22 of the Complaint.

23. SSHC denies the allegations in Paragraph 23 of the Complaint and states that the referenced Amended Complaint speaks for itself.

24. SSHC denies the allegations in Paragraph 24 of the Complaint and states that the referenced Amended Complaint speaks for itself.

25. SSHC denies the allegations in Paragraph 25 of the Complaint.

26. SSHC denies the allegations in Paragraph 26 of the Complaint.

27. SSHC denies the allegations asserted in the unnumbered heading under "ii." SSHC denies the allegations of Paragraph 27 of the Complaint, except admits that federal and

state governmental entities conducted an investigation of FORBA and certain Small Smiles Dental Centers.

28. SSHC denies the allegations in Paragraph 28 of the Complaint and states that the referenced Amended Complaint speaks for itself.

29-31. SSHC denies the allegations in Paragraphs 29 -31 of the Complaint.

32. SSHC denies the allegations in the unnumbered heading under “iii.” SSHC admits that before the inception of the National Union Policies, SSHC submitted multiple notices to Dentist’s Advantage and American Insurance Company regarding the government investigations that were underway and providing notice of potential claims. SSHC denies the remaining allegations in Paragraph 32 of the Complaint.

33. SSHC denies the allegations of Paragraph 33, except admits that it provided detailed information to Dentist’s Advantage and American Insurance Company regarding the government investigations.

34. SSHC admits that it sent a notice to Dentist’s Advantage dated February 7, 2008, among others, informing Dentist’s Advantage of the government investigations, and SSHC states that the notice speaks for itself. SSHC denies the remaining allegations in Paragraph 34 of the Complaint.

35-37. SSHC denies the allegations in Paragraphs 35-37 of the Complaint.

38. SSHC denies the allegations in the unnumbered heading under “iv.” SSHC lacks information sufficient to admit or deny the allegations in Paragraph 38 of the Complaint and therefore denies them.

39. SSHC denies the allegations in Paragraph 39 of the Complaint and states that the Notice of Nonrenewal speaks for itself.

40-42. SSHC denies the allegations contained in Paragraphs 40-42 of the Complaint.

43-50. SSHC denies the allegations of paragraphs 43-50 and refers to the Amended Complaint for the full contents thereof.

51. SSHC denies the allegations in Paragraph 51 of the Complaint, except to admit that it did not disclose to National Union the contractual indemnification claims FORBA made to Old FORBA. SSHC further responds that the Complaint filed by FORBA in September 2009 and the Amended Complaint filed by FORBA in January 2010 were a matter of public record.

52-53. SSHC denies the allegations in Paragraphs 52-53 of the Complaint.

54. SSHC denies the allegations asserted in the heading under “vi.” SSHC admits that the complaint in the *qui tam* action, captioned *United States ex rel. McDaniel v. FORBA Holdings, LLC* states that it was filed on or about December 21, 2007, and states that the *qui tam* complaint speaks for itself. SSHC further responds that the complaint was filed under seal. SSHC denies the remaining allegations in Paragraph 54 of the Complaint.

55. SSHC denies the allegations in Paragraph 55 of the Complaint, and states that the *qui tam* complaint speaks for itself.

56. SSHC admits that the complaint in the *qui tam* action, captioned *United States of America and Commonwealth of Virginia ex rel. Angela Crawford v. Small Smiles of Roanoke, LLC* states that it was filed on or about June 12, 2008, and states that the *qui tam* complaint speaks for itself. SSHC further responds that the complaint was filed under seal. SSHC denies the remaining allegations in Paragraph 56 of the Complaint.

57. SSHC denies the allegations in Paragraph 57 of the Complaint, and states that the *qui tam* complaint speaks for itself.

58. SSHC admits that the complaint in the *qui tam* action, captioned *John J. Haney o/b/o United States of America v. Children's Medicaid Dental of Columbia, LLC* states that it was filed on or about July 16, 2008, and states that the *qui tam* complaint speaks for itself. SSHC further responds that the complaint was filed under seal. SSHC denies the remaining allegations in Paragraph 58 of the Complaint.

59. SSHC denies the allegations in Paragraph 59 of the Complaint and states that the *qui tam* complaint speaks for itself.

60-64. SSHC denies the allegations in Paragraphs 60-64 of the Complaint.

65-69. SSHC admits the allegations in Paragraphs 65-69 of the Complaint.

70-73. SSHC denies the allegations in Paragraphs 70-73 of the Complaint.

74. SSHC incorporates by reference its responses to Paragraphs 1 through 73 as if fully set forth herein.

75. Paragraph 75 of the Complaint states a legal conclusion to which no response is required. To the extent a response is deemed to be required, SSHC denies the allegations in Paragraph 75.

76-79. SSHC denies the allegations in Paragraphs 76-79 of the Complaint.

80. SSHC incorporates by reference its responses to Paragraphs 1 through 79 as if fully set forth herein.

81. SSHC denies the allegations in Paragraph 81 of the Complaint. SSHC lacks information sufficient to form a belief as to the truth of the allegations as to National Union, and therefore denies them.

82. SSHC admits that it never intended that the Entities Policies would provide no coverage for corporate and/or business entities. SSHC denies the remaining allegations of

Paragraph 82 for lack of information sufficient to form a belief as to the truth of the allegations therein and further responds that the Entities Policies speak for themselves.

83. SSHC denies the allegations in Paragraph 83 of the Complaint.

84. SSHC denies the allegations in Paragraph 84 of the Complaint. SSHC further states that it lacks information sufficient to form a belief as to the truth of the allegations as to National Union and therefore denies them.

85. SSHC denies the allegations in Paragraph 85 of the Complaint. SSHC further states that it lacks information sufficient to form a belief as to the truth of the allegations as to National Union and therefore denies them.

86. SSHC admits that the Complaint purports to seek to reform the Policies, but denies that National Union is entitled to such relief. SSHC denies the remaining allegations in Paragraph 86 of the Complaint.

87. SSHC denies the allegations in Paragraph 87 of the Complaint.

88. SSHC admits that the Complaint purports to seek to reform the Policies, but denies that National Union is entitled to such relief. SSHC denies the remaining allegations in Paragraph 88 of the Complaint.

89. SSHC incorporates by reference its responses to Paragraphs 1 through 88 as if fully set forth herein.

90. SSHC denies the allegations in Paragraph 90 of the Complaint. SSHC further states that it lacks information sufficient to form a belief as to the truth of the allegations as to National Union and therefore denies them.

91. SSHC admits that the Complaint purports to seek to reform the Policies, but denies that National Union is entitled to such relief. SSHC denies the remaining allegations in Paragraph 91 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

National Union's claims against SSHC fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Some or all of National Union's claims are barred by the doctrine of waiver.

Third Affirmative Defense

Some or all of National Union's claims are barred by the doctrine of estoppel.

Fourth Affirmative Defense

Some or all of National Union's claims are barred by the doctrine of laches.

Fifth Affirmative Defense

Some or all of National Union's claims are barred by applicable statutes of limitations.

Sixth Affirmative Defense

Plaintiff's claim is barred by the doctrine of unclean hands.

Seventh Affirmative Defense

Plaintiff's claim is barred for failure to join one or more indispensable parties.

Eighth Affirmative Defense

Plaintiff's claim is barred by plaintiff's material antecedent breach of the subject contract.

Ninth Affirmative Defense

Plaintiff's claim is barred by plaintiff's fraudulent concealment of its intention not to perform the subject contract in material part.

Tenth Affirmative Defense

Beyond the above affirmative defenses, SSHC's investigation into these matters is continuing and, as such, SSHC reserves the right to raise additional affirmative defenses as this action proceeds.

WHEREFORE, SSHC respectfully requests: (1) that Plaintiff's Complaint in this matter be dismissed with prejudice, with costs taxed to the Plaintiff; and (2) that the Court grant SSHC such further relief as the Court deems appropriate.

Respectfully submitted,

/s/ Emily B. Warth
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the Court's electronic filing system on all registered users, and via United States Mail, postage prepaid on all others, on the following:

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This 10th day of September, 2010.

/s/ Emily B. Warth