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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CONTINENTAL CASUALTY COMPANY,

11 Plaintiff,

12 v.

13 HENRI F. DUYZEND, D.D.S., and SHARON
14 DUYZEND, husband and wife; KATHRYN
15 COX; BEVERLY HAWLEY and
16 RICHARD HAWLEY, husband and wife;
17 WILLIAM MARK SMITH and NADINE
18 SMITH, husband and wife; CHERYL
19 GRANT; JILL ORTIZ; THOMAS
20 PRIGMORE and SATOKO PRIGMORE,
21 husband and wife; ROBERT WALLA and
22 KRISTINE WALLA, husband and wife;
23 DARYL STUART and LAUREL STUART,
husband and wife; DOUGLAS SUNDBY and
CYNDI SUNDBY, husband and wife; CHRIS
STUART; MEGAN WALLA; THOMAS
HUBER; DAVID HUBER; DANIEL O'NEAL
and PATRICIA O'NEAL, husband and wife,
DALE HOLLINGSWORTH and RUTH
HOLLINGSWORTH, husband and wife;
SARAH HOLLINGSWORTH; NICOLE
TIEDEMAN and DERRY TIEDEMAN,
husband and wife; TRACY ZICKUHR and
SANDY ZICKUHR, husband and wife; ZOE
ZICKUHR; TOM WELSH and ANNE
WELSH, husband and wife; and DOES 1-100,

Case No. 13-cv-1508

**COMPLAINT FOR EXPEDITED
DECLARATORY JUDGMENT
AND INTERPLEADER OF
REMAINING POLICY LIMITS**

COMPLAINT

Page 1 of 21

1600769v1/012341

SUSMAN GODFREY L.L.P.

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Seattle, WA 98101-3000

Tel: (206) 516-3880; Fax: (206) 516-3883

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2 Defendants.

3 Plaintiff Continental Casualty Company, by and through its undersigned attorneys,
4 hereby brings this Complaint for Expedited Declaratory Judgment and Interpleader of
5 Remaining Policy Limits against Defendants, alleging as follows:

6 **THE PARTIES**

7 1. Plaintiff Continental Casualty Company ("Continental") is an Illinois
8 corporation with its principal place of business in Chicago, Illinois.

9 2. Defendants Henri F. Duyzend, D.D.S., and Sharon Duyzend, husband and
10 wife, are citizens of the State of Washington, residing in Shoreline.

11 3. On information and belief, Interpleader-Defendant Kathryn Cox is a citizen
12 of the State of Washington, residing in Seattle.

13 4. On information and belief, Interpleader-Defendants Richard Hawley and
14 Beverly Hawley, husband and wife, are citizens of the State of Washington, residing in
15 Woodway.

16 5. On information and belief, Interpleader-Defendants William Mark Smith and
17 Nadine Smith, husband and wife, are citizens of the State of Washington, residing in
18 Lynnwood.

19 6. On information and belief, Interpleader-Defendant Jill Ortiz is a citizen of the
20 State of Washington, residing in Edmonds.

21 7. On information and belief, Interpleader-Defendants Thomas Prigmore and
22 Satoko Prigmore, husband and wife, are citizens of the State of Washington, residing in
23 Lynnwood.

1 8. On information and belief, Interpleader-Defendants Robert Walla and Kristine
2 Walla, husband and wife, are citizens of the State of Washington, residing in Edmonds.

3 9. On information and belief, Interpleader-Defendants Daryl Stuart and Laurel
4 Stuart, husband and wife, are citizens of the State of Washington, residing in Shoreline.

5 10. On information and belief, Interpleader-Defendants Douglas Sundby and
6 Cyndi Sundby, husband and wife, are citizens of the State of Washington, residing in Brier.

7 11. On information and belief, Interpleader-Defendant Chris Stuart is a citizen of
8 the State of Washington, residing in Marysville.

9 12. On information and belief, Interpleader-Defendant Megan Walla is a citizen
10 of the State of Washington, residing in Edmonds.

11 13. On information and belief, Interpleader-Defendant Thomas Huber is a citizen
12 of the State of Washington, residing in Bothell.

13 14. On information and belief, Interpleader-Defendant David Huber is a citizen of
14 the State of California, residing in Riverside.

15 15. On information and belief, Interpleader-Defendants Daniel O'Neal and
16 Patricia O'Neal, husband and wife, are citizens of the State of Washington, residing in Mill
17 Creek.

18 16. On information and belief, Interpleader-Defendants Dale Hollingsworth and
19 Ruth Hollingsworth, husband and wife, are citizens of the State of Washington, residing in
20 Shoreline.

21 17. On information and belief, Interpleader-Defendant Sarah Hollingsworth is a
22 citizen of the State of Washington, residing in Seattle.

1 18. On information and belief, Interpleader-Defendants Derry Tiedeman and
2 Nicole Tiedeman, husband and wife, are citizens of the State of Washington, residing in
3 Edmonds.

4 19. On information and belief, Interpleader-Defendants Tracy Zickuhr and
5 Sandra Zickuhr, husband and wife, are citizens of the State of Washington, residing in
6 Edmonds.

7 20. On information and belief, Interpleader-Defendant Zoe Zickuhr is a citizen of
8 the State of Arizona, residing in Phoenix.

9 21. On information and belief, Interpleader-Defendants Tom and Anne Welsh,
10 husband and wife, are citizens of the State of Washington, residing in Shoreline.

11 22. On information and belief, Interpleader-Defendants Does 1-100 are former
12 patients of Dr. Duyzend that may have or intend to bring a professional dental liability claim
13 against him. Each is a citizen of the State of Washington or a state other than the States of
14 Illinois. Plaintiffs do not presently know the true name of these persons.

15 **JURISDICTION AND VENUE**

16 23. This Court has subject matter jurisdiction over this action under 28 U.S.C.
17 § 1332(a) and (c) because Plaintiff is a citizen of a different state than each Defendant and
18 the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and
19 costs.

20 24. The Court also has jurisdiction under 28 U.S.C. § 1335(a) and (b) and
21 FEDERAL RULE OF CIVIL PROCEDURE 22. Alternatively, the court has jurisdiction under 28
22 U.S.C. § 1367 for at least some of the counts.

25. This Court has authority to grant Plaintiff the relief it seeks pursuant to FEDERAL RULE OF CIVIL PROCEDURE 57 and 28 U.S.C. §§ 2201 *et seq.* because the facts alleged herein show that there is a substantial controversy concerning certain contractual obligations and payments made or due from one party to the other of sufficient immediacy and reality to warrant a “speedy hearing” and expedited declaratory relief.

26. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a), (b), and (c) because a substantial part of the events or omissions giving rise to the claim occurred in this district and, alternatively, because at least one defendant is subject to this Court's personal jurisdiction with respect to this action.

FACTS

27. Dr. Duyzend retired from dentistry in December 2007 after practicing for nearly 30 years in Shoreline, Washington. Throughout his career, he treated thousands of individuals, many of whom were longtime patients.

28. Continental issued Professional Liability Insurance Policy No. DLP 29711911 to Dr. Duyzend for the period June 14, 2007, to June 14, 2008 (“the Policy”). Dr. Duyzend canceled the Policy on December 21, 2007. A true and correct copy of the Policy is attached as Exhibit A.

29. The Policy provides professional liability “dentists/oral surgeons” coverage on a claims-made basis subject to a \$5,000,000 per claim liability limit and an \$8,000,000.00 aggregate liability limit. Ex. A at 1.

30. In addition to those liability limits, the Policy also requires Continental to pay all claim expenses, including defense costs, unless and until “payment of the policy limits

1 pursuant to, or in furtherance of, a judgment or settlement with, or on behalf of, the injured
2 party, or by consent of the insured.” *Id.* at 41.

3 31. The Policy also precludes Continental from settling any claim without Dr.
4 Duyzend’s consent. *Id.* at 49.

5 32. The dentist to whom Dr. Duyzend sold his practice, Dr. David To, allegedly
6 told Dr. Duyzend’s former patients that much of Dr. Duyzend’s care had been sub-standard
7 and that he had performed unnecessary procedures on them.

8 33. On April 11, 2008, Continental received notice of a claim related to Dr.
9 Duyzend. Continental immediately contacted Dr. Duyzend to inquire into the basis of the
10 claim, inform him of the coverage provided under the Policy, and request additional
11 information from him regarding the claim.

12 34. Shortly thereafter, Continental retained John C. Versnel, III, of Lawrence &
13 Versnel PLLC to represent Dr. Duyzend. Continental asked Dr. Duyzend to provide both it
14 and Mr. Versnel with a summary of his knowledge about the basis of the claim.

15 35. Continental also notified Dr. Duyzend that the claims against him might
16 exceed the Policy’s aggregate liability limit and that he may wish to obtain personal counsel.

17 36. Dr. Duyzend subsequently retained Greg Harper of Harper | Hayes PLLC as
18 personal counsel.

19 37. Since receiving the first claim in April 2008, Continental has timely
20 acknowledged, responded to, and analyzed each claim as it arose and, with Dr. Duyzend’s
21 express consent, sought to settle each claim as promptly as it could in order to minimize
22 damage and harm to Dr. Duyzend, including damage and harm to his reputation – one of his
23 chief concerns.

1 38. As of July 18, 2012, Continental had paid \$4,418,486.00 to settle the claims
2 of 92 claimants.

3 39. In July 2012, in the hopes of resolving all remaining claims against Dr.
4 Duyzend within the Policy's remaining aggregate liability limit, Continental obtained Dr.
5 Duyzend's consent to attempt a global mediation with all remaining claimants and their
6 counsel in which Continental would offer the remaining claimants \$3,531,514.00 in
7 exchange for a full release of all unresolved claims against Dr. Duyzend. This sum
8 represented the remaining funds available under the Policy's aggregate liability limit less
9 \$50,000 that Mr. Duyzend insisted Continental reserve in case of future claims.

10 40. That effort was largely successful. At the ensuing global mediation, Mr.
11 Versnel settled the remaining claims of three of the four attorneys representing the
12 remaining claimants for \$2,633,385.00. Each of these 119 settlements were made with Dr.
13 Duyzend's express consent and on the recommendation and consent of Mr. Harper.

14 41. The only claims that did not settle were those belonging to the 29 claimants
15 represented by Michael S. Wampold (hereinafter, the "Cox claimants"). They had filed suit
16 against Dr. Duyzend and his wife in King County Superior Court in September 2011. A true
17 and correct copy of their complaint is attached as Exhibit B.

18 42. Accordingly, as of January 2013, with Dr. Duyzend's express consent, Mr.
19 Versnel had resolved the claims of 237 of the 266 claimants then-identified for a total of
20 \$7,051,871.00. The only unresolved claims were those of the 29 Cox claimants.

21 43. At no point had the Cox claimants ever offered to settle their claims against
22 Dr. Duyzend within the Policy's aggregate liability limit.

1 44. Nevertheless, on February 20, 2013, Continental tried again to achieve a
2 resolution with the Cox claimants on Dr. Duyzend's behalf. With Mr. Duyzend's
3 permission and on the recommendation and consent of Mr. Harper, Continental offered the
4 Cox claimants \$898,129.00 to resolve their claims. This sum represented the remaining
5 funds available under the Policy's aggregate liability limit less \$50,000 that Mr. Duyzend
6 insisted Continental reserve in case of future claims.

7 45. The Cox claimants refused to settle for the offered amount but did agree to
8 submit their dispute to binding arbitration. A true and correct copy of the parties' arbitration
9 agreement is attached as Exhibit C.

10 46. The agreed-upon arbitration took place in July 2013. Following a six-day
11 hearing, the arbitrator awarded the Cox claimants \$35,212,000.00 in total damages (an
12 average of more than \$1,200,000.00 per claimant or approximately 40 times more per
13 claimant than the amounts for which prior claims had been resolved). A true and correct
14 copy of the arbitrator's verdict form is attached as Exhibit D.

15 47. On July 25, 2013, King County Superior Court Judge Julie Spector confirmed
16 the arbitration award and entered final judgment in favor of the Cox claimants against Dr.
17 Duyzend, his wife, and their marital community in the amount of \$35,212,000.00 plus post-
18 judgment interest. A true and correct copy of that order is attached as Exhibit E.

19 48. Subsequent to obtaining final judgment, however, the Cox claimants moved
20 to amend their complaint against the Duyzends to add TOG-POP, LLC, a Delaware limited
21 liability company allegedly owned by the Duyzends, as a defendant in the underlying case
22 and to state a fraudulent transfer claim against Dr. Duyzend, his wife, and TOG-POP, LLC
23 (the "Fraudulent Transfer Claim"). A true and correct copy of their motion is attached as

1 Exhibit F. A true and correct copy of their proposed amended complaint is attached as
2 Exhibit G.

3 49. In their motion to amend, the Cox claimants allege that:

- 4 a. “Henri and Sharon Duyzend own TOG-POP, LLC.” Ex. F at 2.
- 5 b. “Documents produced during discovery—and Dr. Duyzend’s
6 deposition—revealed that in December 2008, about six months after
7 numerous patients began to make claims against Dr. Duyzend, defendants
8 transferred significant assets to the Delaware LLC.” *Id.* at 2-3.
- 9 c. The Duyzends “engaged in the fraudulent transfer of significant assets to
10 the LLC for the purpose of avoiding liability and collection by any
11 plaintiffs, including these plaintiffs, that ultimately obtained an
12 enforceable judgment against defendants in violation of Washington’s
13 Uniform Fraudulent Transfer Act statute, RCW 19.40 *et seq.*” *Id.* at 5.

14 50. Similarly, in their attached amended complaint, the Cox claimants allege that:

- 15 a. “On information and belief, the Duyzends transferred certain assets to
16 defendant, TOG-POP, LLC.” Ex. G at 3.
- 17 b. “The Duyzends made such transfers to TOG-POP, LLC with intent to
18 hinder, delay and/or defraud creditors of the Duyzends, or alternately
19 made such transfers without reasonably equivalent value.” *Id.*
- 20 c. “As a direct and proximate result of the Duyzends’ actions and/or
21 omissions described herein, the Duyzends and defendant TOG-POP, LLC
22 have violated the various provisions of Washington’s Uniform Fraudulent
23 Transfer Act statute, RCW 19.40 *et seq.* and defendants are liable to

1 plaintiffs for damages in amounts to be proven at trial, as the initial
2 transferee and/or entity for whose benefit the transfers were made. *Id.*

3 51. The Policy provides coverage only for “**injury or damage**” caused by a
4 “**dental incident**,” which the Policy defines to require, among other things, an “incident
5 arising out of the supplying of or failure to supply **professional services** by **you** or anyone
6 for whose professional acts or omissions **you** are legally responsible.” Ex. A at 49. Per the
7 Policy, Continental has “no duty to and will not defend any **claims** not covered by this
8 Coverage Part.” *Id.*

9 52. As a result, no coverage exists under the Policy for the Fraudulent Transfer
10 Claim because it was not caused by the supplying of or the failure to supply professional
11 dental services.

12 53. The Policy also provides coverage only for Dr. Duyzend (the “named
13 insured”) and any non-dentist “employees” of Dr. Duyzend acting within the scope of their
14 professional duties. *Id.* at 49, 54-55 (defining “You”).

15 54. As a result, no coverage exists under the Policy for any claim asserted against
16 Dr. Duyzend’s wife or any other entity in which Dr. Duyzend and/or his wife allegedly may
17 have an interest. This includes, but is not limited to, TOG-POP, LLC.

18 55. On August 14, 2013, Continental informed Dr. Duyzend in writing that it
19 would not defend or indemnify him with respect to the Fraudulent Transfer Claim and
20 would not defend or indemnify his wife or TOG-POP, LLC, in any respect.

21 56. In the same letter, Continental reiterated to Dr. Duyzend that it would
22 continue to defend him against the Cox claimants’ previously asserted professional dental
23 liability claims. It also sought his consent to offer the Cox claimants the remaining

1 \$948,129.00 available under the Policy's aggregate liability limit in exchange for a full
2 release of their claims against him.

3 57. On August 15, 2013, Continental received a letter from Mr. Harper in which
4 he stated only that Dr. Duyzend consented to Continental offering the remainder of the
5 policy limits in exchange for a release of Mr. Wampold's clients' claims against him.

6 58. On August 16, 2013, Dr. Duyzend, his wife, and their marital community
7 were served with an additional complaint for damages, alleging, among other things, that Dr.
8 Duyzend failed to follow the accepted standard of care and exercise the degree of care, skill,
9 and learning expected of a reasonably prudent dentist in the care of Mr. Tom Welsh
10 (hereinafter, "Welsh Complaint"). A true and correct copy of the Welsh Complaint is
11 attached as Exhibit H

12 59. Also on August 16, 2013, the Cox claimants served a subpoena on "CNA
13 Insurance Company" at Continental's address at 333 S. Wabash Ave., Chicago, II 60604,
14 requesting copies of "all insurance policies" issued to Dr. Duyzend and/or Ms. Duyzend and
15 "any and all documents identifying assets claimed to be owned by the Duyzends." A true
16 and correct copy of that subpoena is attached as Exhibit I.

17 60. "CNA Insurance Company" does not exist. Furthermore, as stated at
18 Paragraph 28, Continental issued the Policy at issue here.

19 61. On August 20, 2013, the Cox claimants served a writ of garnishment in the
20 amount of \$35,478,153.00 on "CNA Insurance Company" at Continental's address at 333 S.
21 Wabash Ave., Chicago, II 60604. A true and correct copy of the writ is attached as Exhibit
22 J.

1 62. As stated above, “CNA Insurance Company” does not exist and is therefore
2 not a legal entity capable of being sued. However, Continental expects the Cox claimants
3 will quickly amend their writ to name Continental as the garnishee.

4 63. Continental does not dispute that it is responsible for defending and
5 indemnifying Dr. Duyzend against professional dental liability claims (including by
6 satisfying the Cox claimants’ outstanding judgment against Dr. Duyzend), unless and until
7 such time as Continental has paid out the Policy’s aggregate liability limit “pursuant to, or in
8 furtherance of, a judgment or settlement with, or on behalf of, the injured party, or by
9 consent of the insured.” Ex. A at 41.

10 64. Thus, Continental will defend Dr. Duyzend against the Welsh Complaint and
11 will continue to defend Dr. Duyzend against the Cox claimants should Dr. Duyzend seek to
12 challenge the underlying arbitration judgment against him or the confirmation of that award
13 until such time as Continental has paid out the Policy’s aggregate liability limit “pursuant to,
14 or in furtherance of, a judgment or settlement with, or on behalf of, the injured party, or by
15 consent of the insured.” *Id.*

16 65. However, Continental has no obligation to pay any amount of money that
17 would result in a net payment over the Policy’s aggregate liability limit of \$8,000,000.00.
18 This limits Continental’s remaining indemnification liability to \$948,129.00.

19 66. Moreover, Continental does not have a duty to defend Dr. Duyzend against
20 the Cox claimants’ recently asserted Fraudulent Transfer Claim.

21 67. Finally, once the Court distributes the \$948,129.00 remaining under the
22 Policy’s aggregate liability limit “pursuant to, or in furtherance of, a judgment or settlement
23

1 with, or on behalf of, the injured party, or by consent of the insured,” Continental’s duty to
2 defend Dr. Duyzend against any and all claimants will cease.

3
4 **COUNT I:**
5 **EXPEDITED DECLARATORY JUDGMENT OF NO OBLIGATION TO DEFEND**
6 **DR. DUYZEND AGAINST THE FRAUDULENT TRANSFER CLAIM**

6 68. Continental re-alleges and incorporates by reference paragraphs 1-67.

7 69. A case and substantial controversy exists here between parties with adverse
8 legal interests of sufficient immediacy and reality to warrant speedy declaratory relief.

9 70. The Cox claimants have alleged that Dr. Duyzend fraudulently transferred his
10 assets and seek to recover those assets in order to satisfy their \$35,212,000.00 judgment
11 against him, his wife, and their marital community. The Policy does not include any
12 obligation to defend Dr. Duyzend against the Fraudulent Transfer Claim. If Continental has
13 to defend the Fraudulent Transfer Claim, it will expend in excess of \$75,000.00.

14 71. Accordingly, Continental needs and requests a declaratory judgment to
15 clarify its rights and obligations and to guide it in conducting its future business affairs and
16 requests that the Court grant it such relief on an expedited basis.

17 72. Specifically, Continental seeks a declaratory judgment pursuant to 28 U.S.C.
18 § 2201 *et seq.*, that:

- 19 a. The Fraudulent Transfer Claim is clearly not covered by the Policy.
20 b. Continental owes no obligation to defend or indemnify Dr. Duyzend
21 against that claim.
22 c. Continental has not breached any obligation to Dr. Duyzend in denying
23 coverage and refusing to defend or indemnify him against that claim.

1 **COUNT 2:**
2 **EXPEDITED DECLARATORY JUDGMENT OF NO OBLIGATION**
3 **TO DEFEND MRS. DUYZEND AGAINST ANY CLAIM**

4 73. Continental re-alleges and incorporates by reference paragraphs 1-72.

5 74. A case and substantial controversy exists between parties with adverse legal
6 interests of sufficient immediacy and reality to warrant speedy declaratory relief.

7 75. Since undertaking the defense of Dr. Duyzend in 2008, Continental has
8 consistently told Dr. Duyzend and his counsel that Mrs. Duyzend is not covered under the
9 Policy and that Continental had no obligation to defend or satisfy any judgment against her.

10 76. Continental did not attempt to allocate defense costs between Dr. Duyzend
11 and Mrs. Duyzend because her interests were aligned with her husband.

12 77. Accordingly, Continental needs and requests a declaratory judgment to
13 clarify its rights and obligations and to guide it in conducting its future business affairs and
14 requests that the Court grant it such relief on an expedited basis.

15 78. Specifically, Continental seeks a declaratory judgment pursuant to 28 U.S.C.
16 § 2201 *et seq.*, that

- 17 a. Mrs. Duyzend is clearly not an “insured” under the Policy.
18 b. Continental owes no obligation to defend or indemnify her against any
19 claim.
20 c. Continental has not breached any obligation to Dr. Duyzend or Mrs.
21 Duyzend in denying coverage and refusing to defend or indemnify any
22 claim against Mrs. Duyzend.

23 **COUNT 3:**
INTERPLEADER OF REMAINING POLICY FUNDS

79. Continental re-alleges and incorporates by reference paragraphs 1-78.

1 80. As of this date, Continental has fully resolved 237 claims against Dr.
2 Duyzend at a total cost of \$7,051,871.00, leaving \$948,129.00 remaining under the Policy's
3 aggregate liability limit.

4 81. On July 25, 2013, Judge Spector entered final judgment in favor of the
5 individual Cox claimants against Dr. Duyzend, his wife, and their marital community in the
6 amount of \$35,212,000.00 plus post-judgment interest. Ex. E.

7 82. Judge Spector entered judgment in favor of the individual claimants in the
8 following amounts:

- 9 a. Kathryn Cox: \$1,460,000.00.
- 10 b. Beverly Hawley: \$1,010,000.00.
- 11 c. Richard Hawley: \$990,000.00.
- 12 d. William Mark Smith: \$1,180,000.00.
- 13 e. Nadine Smith: \$1,410,000.00.
- 14 f. Cheryl Grant: \$1,420,000.00.
- 15 g. Jill Ortiz: \$1,110,000.00.
- 16 h. Thomas Prigmore: \$440,000.00.
- 17 i. Satoko Prigmore: \$1,360,000.00.
- 18 j. Robert Walla: \$1,240,000.00.
- 19 k. Kristine Walla: \$1,290,000.00.
- 20 l. Megan Walla: \$440,000.00.
- 21 m. Daryl Stuart: \$1,720,000.00.
- 22 n. Laurel Stuart: \$980,000.00.
- 23 o. Doug Sundby: \$1,450,000.00.

- 1 p. Cyndi Sundby: \$1,170,000.00.
- 2 q. Chris Stuart: \$1,150,000.00.
- 3 r. Thomas Huber: \$1,160,000.00.
- 4 s. David Huber: \$460,000.00.
- 5 t. Daniel O'Neal: \$2,090,000.00.
- 6 u. Patricia O'Neal: \$1,160,000.00.
- 7 v. Dale Hollingsworth: \$1,142,000.00.
- 8 w. Ruth Hollingsworth: \$1,150,000.00.
- 9 x. Sarah Hollingsworth: \$460,000.00.
- 10 y. Nicole Tiedeman: \$1,150,000.00.
- 11 z. Derry Tiedeman: \$1,140,000.00.
- 12 aa. Tracy Zickuhr: \$1,750,000.00.
- 13 bb. Sandy Zickuhr: \$1,690,000.00.
- 14 cc. Zoe Zickuhr: \$2,040,000.00.

15 83. These individual judgments represent competing claims that exceed Dr.
16 Duyzend's remaining aggregate liability limit under the Policy by \$34,263,871.00.

17 84. Moreover, on August 16, 2013, Dr. Duyzend was served with the Welsh
18 Complaint. Mr. and Mrs. Welsh represent additional competing claims to the \$948,129.00
19 remaining under the Policy's aggregate liability limit.

20 85. Moreover, there exists the possibility that unknown additional former patients
21 (Does 1-100) of Dr. Duyzend may have or intend to bring a professional dental liability
22 claim against him. These claims represent additional competing claims.

23

86. Finally, as the named insured, Dr. Duyzend also has a competing claim to the \$948,129.00 remaining under the Policy's aggregate liability limit.

87. Interpleader pursuant to 28 U.S.C. § 1335(a) and (b) and FEDERAL RULE OF CIVIL PROCEDURE 22 is appropriate under the circumstances:

- a. The limited funds at issue exceed \$500.00.
- b. Two or more claimants of diverse citizenship may be entitled to these limited funds (both David Huber (a California citizen) and Zoe Zickuhr (an Arizona citizen) are diverse from each of the other claimants).
- c. Continental is diverse from each claimant.
- d. Continental cannot determine which claimant is entitled to the funds and has no interest in the funds or in which claimant(s) receive(s) the funds.
- e. Continental is prepared to immediately deposit the remaining funds into the Court registry upon obtaining leave of the Court to do so as required by FEDERAL RULE OF CIVIL PROCEDURE 67(a). Attached as Exhibit K is a proposed order authorizing Continental to deposit the remaining funds into the court registry.

88. Continental therefore requests that the Court grant it leave to interplead into the court registry the \$948,129.00 remaining under the Policy's aggregate liability limit, and that the Court thereafter find each condition for interpleader met in this case and enter an order discharging Continental from any further responsibility or liability in relation to those funds.

COUNT 4:
EXPEDITED DECLARATORY JUDGMENT OF NO FURTHER LIABILITY

89. Continental re-alleges and incorporates by reference paragraphs 1-88.

1 90. A case and substantial controversy exists between parties with adverse legal
2 interests of sufficient immediacy and reality to warrant speedy declaratory relief.

3 91. Continental needs and requests a declaratory judgment to clarify its rights and
4 obligations and to guide it in conducting its future business affairs and requests that the
5 Court grant it such relief on an expedited basis.

6 92. Specifically, Continental seeks a declaratory judgment pursuant to 28 U.S.C.
7 § 2201 *et seq.* that:

- 8 a. Continental does not owe and is not liable to Dr. Duyzend or any other
9 claimant for any portion of any judgment against Dr. Duyzend, his wife,
10 or their marital community, that exceeds the \$948,129.00 remaining
11 under the Policy's aggregate liability limit;
- 12 b. Upon deposit of the \$948,129.00 remaining under the Policy's aggregate
13 liability limit with the Court, Continental satisfied any indemnification
14 obligation it may have owed Dr. Duyzend;
- 15 c. Upon distribution by the Court of the \$948,129.00 remaining under the
16 Policy's aggregate liability limit "in furtherance of, a judgment or
17 settlement with, or on behalf of, the injured party, or by consent of the
18 insured," Continental will have no further obligation to defend Dr.
19 Duyzend; and
- 20 d. Continental otherwise has no further liability or obligation, either in
21 contract or tort, to Dr. Duyzend, the Cox claimants, the Welsh claimants,
22 or any other claimant with respect to any claim relating to or arising
23 under the Policy.

1
2
3 **PRAYER FOR RELIEF**

4 93. WHEREFORE, Continental requests entry of judgment in its favor as
5 follows:

- 6 a. That the Court find and enter an order declaring that the Fraudulent
7 Transfer Claim is clearly not covered by the Policy, that Continental did
8 not owe and does not owe any obligation to Dr. Duyzend to defend or
9 indemnify him against it, and that Continental has not breached any
10 obligation to Dr. Duyzend in denying coverage and refusing to defend
11 that claim.
- 12 b. That the Court find and enter an order declaring that Mrs. Duyzend is
13 clearly not covered by the Policy, that Continental did not owe and does
14 not owe any obligation to Mrs. Duyzend to defend or indemnify her
15 against any claim, and that Continental has not breached any obligation to
16 Dr. Duyzend or Mrs. Duyzend in denying coverage and refusing to
17 defend any claim against Mrs. Duyzend.
- 18 c. That the Court grant it leave to interplead into the court registry the
19 \$948,129.00 remaining under the Policy's aggregate liability limit, and
20 that the Court thereafter find each condition for interpleader met in this
21 case and enter an order discharging Continental from any further
22 responsibility or liability in relation to those funds.
- 23 d. That the Court find and enter an order declaring that:

- i. Continental does not owe and is not liable to Dr. Duyzend or any other claimant for any portion of any judgment against Dr. Duyzend, his wife, or their marital community, that exceeds the \$948,129.00 remaining under the Policy's aggregate liability limit;
- ii. Upon deposit of the \$948,129.00 remaining under the Policy's aggregate liability limit with the Court, Continental satisfied any indemnification obligation it may have owed Dr. Duyzend;
- iii. Upon distribution by the Court of the \$948,129.00 remaining under the Policy's aggregate liability limit "in furtherance of, a judgment or settlement with, or on behalf of, the injured party, or by consent of the insured," Continental will have no further obligation to defend Dr. Duyzend; and
- iv. Continental otherwise has no further liability or obligation, either in contract or tort, to Dr. Duyzend, the Cox claimants, the Welsh claimants, or any other claimant with respect to any claim relating to or arising under the Policy.

- e. That the Court grant Continental any other relief it finds appropriate.
- f. That the Court grant Continental the relief it seeks on an expedited basis.

Dated: August 22, 2013

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