

# EXHIBIT F

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KATHRYN COX; BEVERLY HAWLEY and  
RICHARD HAWLEY, husband and wife;  
WILLIAM MARK SMITH and NADINE  
SMITH, husband and wife; CHERYL  
GRANT; JILL ORTIZ; THOMAS  
PRIGMORE and SATOKO PRIGMORE,  
husband and wife; ROBERT WALLA and  
KRISTINE WALLA, husband and wife;  
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, and  
ZOE ZICKUHR,

Plaintiff(s),

v.

HENRI DUYZEND, D.D.S. and SHARON  
DUYZEND, husband and wife,

Defendant(s).

NO. 11-2-31164-3 SEA

PLAINTIFFS' MOTION TO AMEND  
COMPLAINT

1 **I. INTRODUCTION**

2 Plaintiffs move the Court for leave to file an amended complaint. The proposed amended  
3 complaint is attached to the Declaration of Michael S. Wampold as Exhibit 1.

4 **II. STATEMENT OF FACTS**

5 On September 9, 2011, these 29 plaintiffs brought this lawsuit against defendant Henri  
6 Duyzend (and his wife Sharon Duyzend and their marital community) alleging that Dr. Duyzend  
7 engaged in multi-decade pattern and practice of negligent and fraudulent dental treatment on his  
8 patients. *See* Dkt. No. 1, Complaint for Injuries and Damages. Over the course of many years  
9 Dr. Duyzend performed hundreds of dental procedures on plaintiffs—including root canals and  
10 crowns—that were not indicated and were unnecessary. *Id.* at ¶¶ 9-12, 16. What’s more, the  
11 vast majority of Dr. Duyzend’s unnecessary dentistry fell below the standard of care for a  
12 reasonably prudent dentist. *Id.* at ¶ 16. Plaintiffs now face many years of additional dental re-  
13 treatments to repair the damage that Dr. Duyzend did.

14 On June 25, 2013, this Court entered an Order to Stay Proceedings while the parties  
15 participated in an arbitration before the Honorable Paris Kallas (Retired) at Judicial Dispute  
16 Resolution. Following six days of testimony and evidence, Judge Kallas issued a verdict in favor  
17 of plaintiffs and against defendants, finding that Dr. Duyzend was negligent, failed to obtain  
18 plaintiffs’ informed consent, engaged in fraud, and violated Washington’s Consumer Protection  
19 Act. The plaintiffs, collectively, were awarded \$35,212,000 in damages.

20 On July 25, 2013, this Court reduced the verdict to a judgment against defendants Henri  
21 and Sharon Duyzend in the amount of \$35,212,000.00, and retained jurisdiction for the purpose  
22 of enforcing the judgment.

23 Defendants Henri and Sharon Duyzend own TOG-POP, LLC. *See* Declaration of  
24 Michael S. Wampold, Ex. 2, Henri Duyzend Dep., p.115:2-9. Documents produced during  
25 discovery—and Dr. Duyzend’s deposition—revealed that in December 2008, about six months  
26 after numerous patients began to make claims against Dr. Duyzend, defendants transferred

1 significant assets to the Delaware LLC. Wampold Dec., Ex. 3; Ex. 2, Henri Duyzend Dep., p.  
2 107:25-108:11.

3 Before the case was privately tried to Judge Kallas, plaintiffs deposed defendant Dr.  
4 Duyzend at the King County Superior Court. During that deposition, in an effort to obtain  
5 evidence supporting their fraud and CPA claims, plaintiffs posed questions to Dr. Duyzend about  
6 his transfer of assets to the LLC, which Dr. Duyzend described as "estate planning." Wampold  
7 Dec., Ex. 2, Henri Duyzend Dep., p. 90:9-12 Defense counsel objected to the line of questioning  
8 and the following discussion ensued:

9 THE COURT: Let me get the time line straight here. He retires in December  
10 of '07?

11 MR. VERSNEL: Yes.

12 THE COURT: Claims start rolling in the spring of '08, March?

13 MR. VERSNEL: Yes.

14 THE COURT: By June there's approximately 50 claims of which 15 or so  
15 have been settled?

16 MR. VERSNEL: My recollection, yes.

17 THE COURT: In November of '08, he starts doing the estate planning?

18 MR. VERSNEL: Yes.

19 Understanding the timeline, Judge Spector ruled that plaintiffs were allowed to go forward with  
20 their line of questions regarding Dr. Duyzend's so called "estate planning." The trial court ruled  
21 as follows:

22 THE COURT: Okay. This is what the Court's going to do. I'm going to  
23 allow you to make inquiry. I'm going to note [defense counsel's] objection  
24 for the record.

25 The timing of everything is critical. I don't think it's essential that they have  
26 to be claims for fraud that were beginning to roll in in the spring of '08, what I  
think is essential is that coupled with Dr. To's revelations and the fact that  
these first claims for malpractice were coming in, I think may or may not be  
admissible at trial, I'm not going to make that ruling, but I think it's  
discoverable because it's important to know what legal vehicles the estate  
planning was contemplating without violating attorney-client privilege,

1 obviously, with his estate planner. And but I think it's ripe for discovery here  
2 today.

3 So, I'm going to overrule the objection with the understanding that it may not  
4 be admissible in front of a jury or a trier of fact, however this case is going to  
5 be tried, but I think it's appropriate, I think it's fair, without going to -- you  
6 said it right at the very beginning, without going back to chief civil for special  
7 proceeding -- or supplemental proceedings, which is what it was beginning to  
8 sound like when they line up literally right down the hallway for supplemental  
9 proceedings trying to find the assets on basic creditor/debtor law issues, credit  
10 cards, that type of thing. It's not that type of situation. This is more -- I'm  
11 more concerned about the timing of things because of Dr. To taking over and  
12 immediately finding problems with the billings and the records.

13 So, on that basis alone, I'm going to allow it.

14 Wampold Dec., Ex. 4, Henri Duyzend Dep., p. 110:24-112:4.

15 Plaintiffs now seek leave to amend their complaint to add the Delaware LLC owned by  
16 defendants Henri and Sharon Duyzend, TOG-POP, LLC, as a defendant to this lawsuit based on  
17 the fraudulent transfer of assets completed by defendants in order to escape liability and  
18 collection.

### 19 **III. STATEMENT OF ISSUES**

20 CR 15(a) provides liberal standards for amendment. Are plaintiffs entitled to an order  
21 granting leave to amend the complaint to add TOG-POP, LLC as a named defendant where  
22 justice requires such amendment and where this Court retained jurisdiction for the purposes of  
23 enforcing the judgment?

### 24 **IV. EVIDENCE RELIED UPON**

25 This motion is supported by the Declaration of Michael S. Wampold, together with the  
26 pleadings and files herein.

### 27 **V. LEGAL ARGUMENT**

28 Under CR 15(a)'s liberal standards for amendment, plaintiffs should be allowed to amend  
29 their complaint. CR 15(a) states:

30 [A] party may amend his pleadings only by leave of the Court or by written  
31 consent of the adverse party; and *leave shall be freely given when justice so*  
32 *requires.* (emphasis added).

1 "It is often said that the test as to whether the trial court should grant leave to amend is  
2 whether the opposing party is prepared to meet the new issue." Karl Tegland 3A Washington  
3 Practice, Rules Practice CR 15 (5<sup>th</sup> ed. 2006) (citing *Quackenbush v. State*, 72 Wn.2d 670, 434  
4 P.2d 736 (1967)).

5 Here, justice requires allowing plaintiffs to amend their complaint to add the defendants'  
6 corporation, TOG-POP, LLC, as a defendant to this lawsuit, as it is clear that defendants engaged  
7 in the fraudulent transfer of significant assets to the LLC for the purpose of avoiding liability and  
8 collection by any plaintiffs, including these plaintiffs, that ultimately obtained an enforceable  
9 judgment against defendants in violation of Washington's Uniform Fraudulent Transfer Act  
10 statute, RCW 19.40 *et seq.* Moreover, clearly these defendants, as the owners of the LLC, are  
11 prepared to meet any new issues related to their LLC and collectability of the debt that they now  
12 owe.

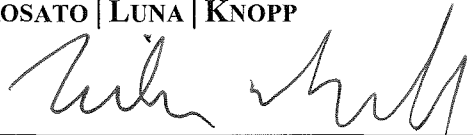
13 For these reasons, plaintiffs respectfully request leave to file an amended complaint  
14 adding TOG-POP, LLC as a defendant to this lawsuit.

15 **VI. PROPOSED ORDER**

16 A proposed order is attached hereto.

17 DATED this 31<sup>st</sup> day of July, 2013.

18 **PETERSON | WAMPOLD**  
19 **ROSATO | LUNA | KNOPP**

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21 Michael S. Wampold, WSBA No. 26053  
22 Ann H. Rosato, WSBA No. 32888  
23 Mallory C. Allen, WSBA No. 45468  
24 Attorneys for Plaintiffs  
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CERTIFICATE OF SERVICE

I certify that on the date shown below a copy of this document was sent as stated below.

Clerk of the Court King County Superior Court 516 Third Avenue Seattle, WA 98104	<input checked="" type="checkbox"/> via efilng/email <input type="checkbox"/> via messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via fax
Honorable Julie Spector King County Superior Court 516 Third Avenue, Judge's Mailroom Seattle, WA 98104	<input type="checkbox"/> via efilng/email <input checked="" type="checkbox"/> via messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via fax
John Versnel Lawrence & Versnel PLLC 4120 Columbia Center 701 Fifth Avenue Seattle, WA 98104	<input checked="" type="checkbox"/> via efilng/email <input type="checkbox"/> via messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via fax
John E. Hart Hart Wagner 2000 SW Broadway, Suite 2000 Portland, OR 97205-3070	<input checked="" type="checkbox"/> via efilng/email <input type="checkbox"/> via messenger <input type="checkbox"/> via US Mail <input type="checkbox"/> via fax

SIGNED in Seattle, Washington this 31 day of July, 2013.

  
Dana Vizzare