

No. 74626-0

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

TAMARA ZAITSEV
Appellant/Plaintiff,

v.

SHAWN KELLER, DDS (SMILES BY DESIGN),
Respondent/Defendant.

BRIEF OF APPELLANT

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Appellant Pro Se

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Defendant

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1. Fed.R.Civ.P.604.
2. Fed.R.Civ.P.6 (c)(1)
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1. *Santos*, 902 F 2d at 1966
2. *Romique*, 60 Wash. At 281, 803P, 2d 57

3. *Storry*, 114 N.C. app. At 176, 441 SE 2d at 604

I. Introduction

Plaintiff Tamara Zaitsev respectfully submits this Brief showing that the trial court erred in dismissing with prejudice her cause of action against Dr. Shawn Keller and his practice Smiles by Design LLC.

II. Assignments of Error

Assignments of Error

1. The trial court erred in dismissing the Plaintiff's case and abused its discretion on December 22, 2015.
2. The trial court erred in its decision to dismiss the Plaintiff's case without considering the fact that Defendant is estopped from asserting the defense of insufficient service of process, and so prevented the Plaintiff from discovering her error and effecting valid service.
3. The trial court erred in its decision not to consider Plaintiff's Excusable neglect, when Plaintiff acted in good faith, and the circumstances were beyond the reasonable control of the Plaintiff.
4. The trial court erred in dismissing the Plaintiff's case and abused its discretion by finding the service insufficient but not curable, and gave the Plaintiff no opportunity to re-serve the Defendant.
5. The trial court erred in denying the Plaintiff, who does not speak English, a day in court and the right for oral arguments, due to a) an interpreter absents, b) not giving enough time for Plaintiff to prepare for a hearing, and c) not disclosing what documents the court had upon which it made its ruling.
6. The trial court erred in denying the Plaintiff a trial on merits as opposed to the rule of law by not willing to look into circumstances, and not lowering the standard bar when dealing with the Plaintiff holding an involuntary Pro-Se status due to inability to find a lawyer to represent her.

7. The trial court erred in dismissing the Plaintiff's case WITH PREJUDICE and abused its discretion.

Issues Pertaining to Assignments of Error

1. Was the Defendant estopped from the defense of insufficient service of process?
2. Did the Plaintiff act in good faith when making the service of process on the Defendant?
3. Were the circumstances that caused insufficient service of process beyond Plaintiffs control?
4. Was the neglect which caused insufficient service of process excusable?
5. Was the service of process insufficient but curable?
6. Was the Plaintiff denied a day in court due to an interpreter absent, not enough time to prepare, and court not disclosing what documents it had upon which to make its ruling?
7. Was the Plaintiff denied a trial on merits as opposed to the rule of law by the court not willing to look into circumstances, and not lowering the standard bar when dealing with the Plaintiff holding an involuntary Pro-Se status due to inability to find a lawyer to represent her.

III. STATEMENT OF THE CASE

A. On June 21, 2012 Appellant/Plaintiff Tamara Zaitsev (Zaitsev) was severely injured by Respondent/Defendant Dr. Shawn Keller (Dr. Keller), who performed an implant surgery in her mouth and failed to remove a piece of drill bit (FB) that was broken off at the time of the procedure and stuck in Zaitsev's lower jawbone, thus causing complications with Zaitsev's health and a necessity of additional medical procedures and surgeries. Since the incident, Zaitsev has not been able to lead a normal lifestyle and has been seeking medical advice and treatment from numerous

doctors and medical institutions.¹ [CP @ 3, 4].² Zaitsev was under care of Dr. Keller until about January 15, 2013, and believes that the last decision to leave the FB in her jaw was made by Dr. Keller between November 2012 through January 2013 (last omission).

B. Zaitsev retained two attorneys who procrastinated much time in her case. The last attorney has withdrawn from representing the case 2 months before the 3-year statute of limitations (from the day of the incident) filing deadline. Although, Zaitsev had contacted numerous lawyers, at this crucial point - so close to the filing deadline, it was impossible to retain an attorney on contingency fee, and she could not afford to pay out of pocket due to her indigent status, age of retirement, and health issues. Zaitsev was not able to retain an attorney to this day. Zaitsev presents to this court as evidence some of the numerous attorney letters/emails of refusal before and after the case dismissal.³ Many attorneys were contacted by phone. Zaitsev can request other letters of refusal from these attorneys upon demand of this court, if necessary. Zaitsev was left no choice but to represent herself Per-Se with the help of her daughters and a family friend, who have no legal education, and limited English. Zaitsev does not read nor write English and requires an interpreter.

C. On May 7, 2015, Zaitsev filed a COMPLAINT [CP @ 3, 4] against Dr. Keller in the King County Superior Court based on facts stated above. On May 8, 2015, Zaitsev, with the help of her daughter, and a family friend submitted the service of process documents to the Sheriff's office for delivery to Dr. Keller's attorney Mr. Versnel (Versnel). Zaitsev was certain the following documents were given to the Sheriff: 1) ORDER SETTING CIVIL CASE SCHEDULE and supporting information pages [CP @ 5-9], SUMMONS [CP @ 1, 2], and COMPLAINT [CP @ 3, 4].

D. On May 21, 2015, Versnel filed a NOTICE OF APPEARANCE [CP @ 13], but has not responded with any answer, motion, nor pleading that would indicate that the service of process was incomplete or insufficient until six months later on Nov 15, 2016, when he finally filed a MOTION TO DISMISS [CP @ 18-24] based on insufficient/incomplete service of process. Versnel argues that he only received the Order Setting Civil Case Schedule and never received Complaint and Summons. He also argues that the Service of Process had to be served directly on his client Dr. Keller and not on him (Versnel), therefore, the court does not have jurisdiction to hear this case.

¹ Complaint included in Clerk's Papers, PDF pages 3 & 4.

² Clerk's Papers designation [CP @ X] where X is PDF page number of reference.

³ Exhibits 14-23 included in this Brief (not in Clerk's Papers).

E. Zaitsev asserts that she acted in good faith, and the reason why she did not serve the process on Dr. Keller directly is because she believed that she was precluded and warned by Versnel not to bother Dr. Keller anymore. On more than one occasion, in his correspondence to Zaitsev's former attorney, Versnel insisted that he is representing Dr. Keller as well as Dr. Keller's business Smiles by Design LLC and does not want his client bothered, and that all future concerns and correspondence has to be addressed to him (Versnel). The last letter from Versnel was written less than 3 months before the commencement of the suit, and Versnel never indicated in any way that he is not representing Dr. Keller any longer. Zaitsev argues that she was misled by attorney Versnel's letters who represents the law and she was reluctant to break the law.⁴

F. Zaitsev asserts that she tried to serve the Defendant in good faith. Because of her poor eye sight and general health, and limited English, she relied upon the help of her daughter and family friend for help, and was unaware of the missing documents. The circumstances were not in the scope of her control. Zaitsev was certain that a complete package of Service of Process documents were handed to the Sheriff for delivery to Versnel. Zaitsev had no idea the Summons and Complaint somehow went missing, and believes it could have been a clerical mistake. But, if she would have been timely notified by the Defendant's attorney about the incomplete service of process, she would have corrected the error by contacting the Sheriff's office, or/and re-serving the process.⁵

G. Zaitseva was not represented by an attorney, and the court did not appoint her one, despite her request in writing.⁶

H. Zaitsev tried negotiations with the Defendant and has sent a Demand Letter⁷ to Versnel on October 12, 2015 by certified mail. Versnel never responded. Zaitsev also filed a complaint with the WA Department of Insurance because Versnel also represents the liability insurance company for Dr. Keller's insurance policy who is responsible for this claim. The claim was denied.

I. On Dec. 16, 2015, Defendant filed DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS [CP @ 51-55], as well as DECLARATION OF JOHN C.

⁴ See PLAINTIFF'S RESPONSE TO MOTION TO DISMISS [CP @ 40-43] and supporting letters from Versnel [CP @ 47-48].

⁵ See PLAINTIFF'S RESPONSE TO MOTION TO DISMISS [CP @ 40-43] and supporting letters from Versnel [CP @ 47-48].

⁶ See PLAINTIFF'S RESPONSE TO MOTION TO DISMISS [CP @ 43].

⁷ See Exhibit 11 included with this Brief (not in Clerk's Papers).

VERSNEL, III IN SUPPORT OF DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS [CP @ 56-57]. Zaitsev did not have sufficient time to respond before Dec. 22 court hearing to address Versnel's statements. Zaitsev prepared her Declaration and supporting documents⁸ in response and e-filed the documents on Dec. 19, 2015. Zaitsev was notified by the court's automatic e-system, the next day after the dismissal judgement was already entered, that these documents did not go through. So, the trial court never received Exhibits 11 and 12.⁹

J. On Dec. 22, 2015, Zaitsev appeared before the trial court for a hearing of MOTION TO DISMISS [CP @ 18-24]. The court did not provide Zaitsev with a qualified interpreter; instead, her daughter Elena Zaitseva assisted her in interpreting. Her daughter is not a qualified court interpreter. At the time of the hearing, the court informed Zaitsev that she has an option to allow the court to make judgement without oral arguments, based on the written documents that court had.¹⁰ The court did not disclose the documents that it had, and Zaitsev was not aware that the court did not have all the documents that were e-filed.

K. Zaitsev asserts that from Versnel's actions it is evident that he purposely concealed the fact that service was insufficient. These actions, or failure to act on the part of Versnel delayed the case action significantly and prejudiced Zaitseva substantially, because at this point the Sheriff's department refused to even discuss the recovery of missing documents from six months ago; Zaitsev was not given an option by the trial court to cure or re-serve the process. Also, the trial court assumed that the 3-year statute of limitations for filing of the case has run out and Zaitseva could not re-file, therefore, the case was dismissed with prejudice by the trial court.¹¹

IV. SUMMARY OF ARGUMENT

Plaintiff Zaitsev argues that she acted in good faith and therefore, a reasonable neglect has occurred causing the service of process to be ineffective. Zaitsev argues that although the service was insufficient, but was curable. Zaitsev argues that Defendant's attorney Versnel, knowing that Zaitsev was not represented by a lawyer, had purposely delayed the case action, and thus was estopped from the defense of insufficient process of service, based on his actions or failure to act. Zaitsev argues that, if she was timely notified by Versnel that the service of process was insufficient, she

⁸ See Exhibit 12 included with this Brief (not in Clerk's Papers).

⁹ See Exhibits 11 & 12 included with this Brief (not in Clerk's Papers).

¹⁰ See CLERK'S MINUTE ENTRY [CP @ 62].

¹¹ See ORDER GRANTING CR 12(b) MOTION FOR DISMISSAL [CP @ 63-64].

would have had an opportunity to cure the process. Zaitsev argues that the insufficient service of process needs to be quashed and she has to be given an opportunity to cure the service.

V. ARGUMENT

A. **Waiver and Estoppel.** The Defendant waived the defense of ineffective service of process. Defendant did not alert the Plaintiff to the issue of ineffective service of process before the 90-day service period expired. The defendant attempted to conceal the issue to the plaintiff. (Assignment of Error 1 & 2).

a. From Versnel's actions it is evident that he purposely did not alert Zaitsev that service was insufficient. These actions, or failure to act on the part of Versnel delayed the case action significantly and prejudiced Zaitseva substantially.

b. After receiving the incomplete service of process, on May 21, 2015, Versnel filed a NOTICE OF APPEARANCE [CP @ 13-14], but has not responded with any answer, motion, nor pleading that would indicate that the service of process was incomplete or insufficient, until SIX months later on Nov 16, 2015, when he finally filed a MOTION TO DISMISS [CP @ 18-24] based on insufficient/incomplete service of process, where he also claims that he was not authorized by the Defendant to accept the service of process. Versnel argues that his statements in the Notice of Appearance¹² were supposed to somehow alert the Plaintiff that the process was served incorrectly. Versnel's statement, "You are requested to serve all **future** [emphasis added] papers and proceedings in said cause, except original process, upon said attorneys at their address below stated."¹³ Since Zaitseva has already performed the service of process on the Defendant's attorney Versnel -- the reason for his appearance -- and had no idea that service was not sufficient, she believed that she had no need to perform another **future** service of process. The fact that Versnel did not state that the service -- which was already made on him -- was incorrect, and appeared in court to defend the case, made Zaitseva believe that the service was sufficient. The language in Versnel's Notice of Appearance was obscure and vague, not clear to a layperson, and cannot serve as a notice of insufficient service to Plaintiff. If Versnel wanted to alert Plaintiff of insufficient service in good faith, he would have stated that in plain language, and not in disguise, playing "hints" and "riddles".

c. Defendant cannot justifiably be allowed to "lie and wit", masking by misnomer its contention, that service of process has been insufficient, and then obtain

¹² See NOTICE OF APPEARANCE [CP @ 13]

¹³ See NOTICE OF APPEARANCE [CP @ 13]

a dismissal on that ground only after the statute of limitation has run, thereby depriving the Plaintiff of the opportunity to cure the service defect (*Santos, 902 F 2d at 1966*).

d. Zaitsev would like to draw the court's attention to the fact that Versnel's Motion to Dismiss is dated and signed by him on August 25, 2015, but filed with the court only on November 16, 2015 [CP @ 24]. Evidently, Versnel had been concealing the fact of insufficient service from the court and from Zaitsev until the last possible minute. Had Versnel timely alerted to this matter, Zaitsev would have had sufficient time to cure the defective service. The Defendant waived the defense of insufficient service of process that was asserted only after the time clock run out (*Romique, 60 Wash. At 281, 803P, 2d 57*).

e. "Trial by ambush" of advocacy which has little place in our present day adversarial system, is employed with the preset circumstances in this case (*Matthias v. Knodel 19 Wash. App.1, 5-6, 573 P.2d 1332 (1977)*).

f. The Doctrine of waiver is "designed to prevent a Defendant from ambushing a Plaintiff during litigation either through delay in asserting a defense or misdirecting the plaintiff away from a defense for tactical advantage" (*King v. Snohomish County, 146 Wash, 2d 420,424,47 P.3d S63 (2002)*).

g. In this case the Defendant is estopped from asserting the defense of insufficient service of process. Without alerting the plaintiff to any possible defects of service and plaintiff ran out of time to effect valid service. The court reasoned that by doing so, the defendants in effect "Lured (the) Plaintiff into a "false sense of security" and prevented (the) Plaintiff from discovering her error and effecting valid service within the statutory period (*Storry, 114 N.C. app. At 176, 441 SE 2d at 604*).

B. Excusable neglect. Excusable neglect is not limited strictly to omissions caused by circumstances beyond the control of the Plaintiff. The question is 1) Whether it was within the reasonable control of the Plaintiff, and whether the 2) Plaintiff acted in good faith. (Assignment of Error 1 & 3).

a. Although, the service of process was insufficient, nevertheless, Zaitsev performed it on the Defendant's attorney in good faith. Because of the lack of legal representation, poor eye sight and general health, lack of proper education, retirement age, and limited English, she relied on other people for help, in particular on one of her daughters and a family friend, and was unaware that Summons and Complaint were missing until six months after the filing of the complaint. Zaitsev was certain that she followed the court clerk's instructions, which she received when filing the case. Zaitsev believed that the complete package of Service of Process documents was handed to the Sheriff for delivery to Versnel. Zaitsev had no idea the Summons and Complaint somehow went missing, and believes it could have been a clerical mistake, or a

mistake of people helping her.¹⁴ However, if she would have been timely notified by Defendant's attorney about the incomplete service of process, she would have corrected the error and cured the service of process in a timely manner. The circumstances were not within her reasonable control.

b. Although insufficient, but Zaitsev acted in good faith when she served the Defendant's attorney, instead of the Defendant. Attorney Versnel has made it clear in his correspondence to Zaitsev, through her former attorney, that he (Versnel) is acting as an attorney for Dr. Keller and Smiles by Design LLC. The reason why Zaitseva did not serve the process on the Defendant Dr. Keller directly is because she was warned by Versnel not to bother Dr. Keller anymore. On more than one occasion, in his correspondence to Zaitsev's former attorney, Versnel insisted that he is representing Dr. Keller as well as Dr. Keller's business Smiles by Design LLC and does not want his client bothered, and that all future concerns and correspondence has to be addressed to him (Versnel).¹⁵ Versnell did not state any exceptions to this demand. Although, the letters do not constitute the wrong on part of Versnel; nevertheless, to Zaitsev, attorney Versnel represented the law, and she was reluctant to break the law. Versnel has never indicated in any way that he was not representing Dr. Keller or his business any longer. Zaitsev was also advised by the trial court clerk to serve the process on the attorney if the Defendant is represented by one. Therefore, Zaitsev acted in good faith by serving the Defendant's attorney.

C. **Service insufficient but curable.** Plaintiff should have been given the opportunity to re-serve the Defendant. The trial court had the discretion to find the service insufficient but curable. By not doing so, the trial court has abused its discretion. The court should quash the service and give Plaintiff the opportunity to re-serve the Defendant. (Assignment of Error 1 & 4).

a. If the Plaintiff is unable to satisfy its burden of demonstrating an effective service, the court has discretion to dismiss or retain the action (*Stevens v. Sec.Pac. Nat;l Bank* 5.38 F. 2d 1387.1389 (9th Cir).

D. **Plaintiff, who does not speak English was denied a day in court and the right for oral arguments** due to 1) an interpreter absent, 2) not enough time to prepare for arguments, and 3) trial court not disclosing what documents it had upon which it was going to make judgement (Assignment of Error 1 & 5).

a. Lack of qualified interpretation. On Dec. 22, 2015, Zaitsev appeared before the trial court for a hearing of MOTION TO DISSMISS [CP @18-24]. It appeared that

¹⁴ See PLAINTIFF'S RESPONSE TO MOTION TO DISMISS [CP @ 40-43] and supporting declarations [CP @ 44-46].

¹⁵ See Versnel's letters to Zaitsev [CP @ 47, 48].

the court wanted to speed thing up and make a fast ruling on the case. The court did not provide Zaitsev with a qualified interpreter, instead, the court allowed Zaitsev's daughter do the interpreting.¹⁶ Zaitsev's daughter is not a qualified court interpreter.

Fed.R.Civ.P.604. states: "An interpreter must be qualified and must give an oath of affirmation to make a true translation." Considering the fact that the Plaintiff's daughter helped prepare the written paperwork for the case on behalf of Zaitsev, a certain conflict of interest existed when the court was discussing her work in front of her mother present. Zaitsev believes that if she had a qualified interpreter present, she would have had a better chance to understand what was said and she would not have permitted the court to make decision on written documents only, which appeared to be the aid in the dismissal of the case. She was reluctant to ask questions, and relied on daughter's better understanding of the circumstances. She had no idea what documents were before the judge and did not understand the procedure, as the daughter did not interpret word by word as a qualified interpreter would have done.

b. Not sufficient time to prepare for argument. Versnel files his DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS [CP @ 51-55], as well as DECLARATION OF JOHN C. VERSNEL, III IN SUPPORT OF DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS [CP @ 56-57] on Dec. 16, 2015 and served on Zaitsev 4 days before Dec. 22 hearing. The court rules state that all affidavits have to be filed with the motion, and served on opposing party no later than seven days before the hearing.¹⁷ Zaitsev did not have sufficient time to prepare before Dec. 22 court hearing. She hurried up and responded with her Declaration¹⁸ and supporting documents.¹⁹, 2015, and e-filed the document, which were never received by the trial court.

c. Trial Court did not inform Zaitsev what documents it relied upon to make its final decision. At the time of the Dec. 22, 2015 hearing, the trial court informed Zaitsev that she has an option to permit the trial court to make judgement without oral arguments, based on the written documents only. The court did not disclose the documents that it had, and Zaitsev was not aware that the court did not have all the documents that were e-filed by her. Zaitsev did not understand the implications or consequences of the ruling that the court proposed, nor did the court explain them. Later, after the judgement was made, Zaitsev received an email from the court informing her that the last Declaration she e-filed on Dec. 19 did not go through due to error, therefore the trial court did not have it before itself when deciding the case, and she was not aware of the fact.

¹⁶ See CLERK'S MINUTES ENTRY [CP @ 62].

¹⁷ See Fed.R.Civ.P. 6(c)(2) "Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time. "

¹⁸ See Exhibit 12 included with this Brief (not in Clerk's papers).

E. Zaitsev was denied a trial on merits as opposed to the rule of law. The trial did not look into the circumstances, and did not lower the standard bar when dealing with the Plaintiff holding an involuntary Pro-Se status due to inability to find a lawyer to represent her. (Assignment of Error 1 & 6).

a. Zaitsev was unfortunate enough to retain two attorneys who did not provide her with sufficient representation and procrastinated her case. The latter attorney LaDonna Jones has withdrawn from representing the case 2 months before the 3-year statute of limitations filing deadline (if calculated from the date of the incident). Although, Zaitsev had contacted numerous lawyers, at this crucial point, so close to the filing deadline, it was impossible to retain an attorney on contingency fee, and she could not afford to pay out of pocket. Zaitsev was not able to retain an attorney to this day. Zaitsev presents as evidence some of the numerous attorney letters/emails of refusal before and after the case dismissal.¹⁹ Many attorneys were contacted by phone. Zaitsev can request other letters of refusal upon demand if necessary. Zaitsev was left no choice but to represent herself Per-Se with the help of her daughters and a family friend, who have no legal education, and limited English. Zaitsev does not read nor write English and requires an interpreter.

The plaintiff pleaded with the trial court to consider her Pro-Se status and lower the standard bar when dealing with the legal issues of the case.²⁰ The court had the discretion, but did not seem to assist the Plaintiff in her pleading. On the contrary, in *Heines v. Kerner*, the Supreme Court held that Pro-se complaint should be held to less stringent standard than formal pleading drafted by lawyers (*Haines v. Kerner, et al. 404 U.S. 519, 92 s. Ct. 594, 30 L. Ed. 2d 652*). Plaintiff believes the Supreme Court meant to apply this standard to all matters of the legal issues as well (*Estelle, Correction Director, et.al v. Gamble 29 U.S.97*).

F. By entering the judgement of dismissal WITH PREJUDICE, the trial court precluded the Plaintiff from arguing her "last omission" defense and/or re-filing the case, thus denying the Plaintiff a due process (Assignment of Error 1 & 7).

a. Although the 3-year statute of limitations from the day of the incident has run on June 21, 2015, the Plaintiff could still argue the "last omission" defense to extend the 3-year statutory period for filing of the case, which would have been arguably either in November 2015 or January 2016, because Plaintiff was still under the care of Dr. Keller during that time. Zaitsev believes that Versnel waited until November to report insufficient service in his MOTION TO DISMISS [CP @ 18-24]. The trial court erred when it assumed that the statute of limitations in this cause of

¹⁹ Exhibits 14-23 included with this Brief (not in Clerk's papers).

²⁰ See PLAINTIFF'S RESPONSE TO MOTION TO DISMISS [CP @ 42].

action has run out on June 21, 2015 (Three years from the date of the incident). The Plaintiff does not see it that way only. The Plaintiff had reserved the "last omission" argument to determine when the 3-year statutory period would run out. The last omission by the Defendant has occurred in November 2012 or January 2013 (arguably). Assuming the argument was successful, the plaintiff would have been able to re-file the case, assuming it was dismissed without prejudice or not dismissed at all. By entering the judgement of dismissal WITH PREJUDICE²¹, the trial court precluded the Plaintiff from arguing her "last omission" defense and/or re-filing the case.

VI. CONCLUSION AND RELIEF SOUGHT

Based on the facts and arguments stated above, the Plaintiff respectfully pleads that this honorable court:

1. Finds that Zaitsev acted in good faith and the circumstances were beyond her reasonable control, therefore, the insufficiency of service of process was caused by a reasonable neglect.
2. Grants that the Defendant is estopped from claiming the defense of insufficient process of service.
3. Grants that the service of process was insufficient but curable; would quash the service and give Zaitsev an opportunity to re-serve the Defendant.
4. Grants Zaitsev an opportunity to re-file the case, or issue a reasonable solution on the court's own motion, as Zaitsev is not fully aware of what possible legal remedies are available to her.

August 6, 2016.

Respectfully submitted,

x Zaitsev Tamara
Signature
Tamara Zaitsev, Pro-Se

08/18/16

²¹ See ORDER GRANTING CR 12(b) MOTION FOR DISMISSAL [CP @ 63-64].

EXHIBIT 11

TAMARA ZAITSEV
15409 NE 12TH St, Apt G-351
Bellevue, WA 98007
Cell Phone (425) 736-1266
Message Phone (425) 736-1266

John C. Versnel, III
Lee Smart P.S., Inc.
1800 One Convention Place
701 Pike St. Seattle, WA 98101

CC: CNA
PO Box 8317
Chicago, IL 60680-8317
Attention: Natalie Howell, Claims Specialist SLC

October 12, 2015

DEMAND

Re:	Policy No. SCD-2083534932
File No.	HMA23265
Your Insured:	Dr. Shawn Keller DDS
Date of Loss:	06.25.2012
Claimant:	Tamara Zaitsev

Dear Mr. Versnel,

This is a demand for paying damages letter. Please read everything at once and very carefully. The conditions spelled out in this demand are very reasonable and meet industry standards, but must be specifically met.

We have delivered this material to you in a timely fashion, so as to maximize the time you have to comply with these reasonable demands.

EXHIBIT 11

Enclosed please find records and bills for your review.

We have provided everything we believe you will need to evaluate the claim. If you request anything else, we expect that you will pay a reasonable amount for said material. Such charges may include, but are not limited to reimbursement of copy charges.

We acknowledge that it is our burden of proof to establish the claims made. We believe we have done so herein. If there is another information you believe you need, you will be responsible to payment.

All enclosures are submitted for settlement purposes only.

Background: On or about June 21, 2012, Tamara Zaitsev (from here on to be referred to as the “Claimant”) was severely injured when Dr. Shawn Keller (from here on to be called the “Insured”), performed an implant surgery in her mouth and failed to remove a piece of drill bit (from here on to be referred to as the “FB”) that was broken off and stuck in Claimant’s lower jawbone (from here on to be referred to as the “Incident”). Since the Incident, Claimant has not been able to lead a normal life and has been seeking medical advice and treatment from numerous doctors and medical institutions to be discussed further in this letter.

Prior Medical History: Claimant was in good overall general health prior to the Incident referenced above.

Medical: Claimant underwent many tests, evaluations, and examinations including (but not limited to: a Computer Axial Tomography Examination (CAT scan) and X-rays; several oral surgeon examinations, general health, pain management, mental and behavioral health examinations, diabetic and cardiac tests. Claimant has also undergone a surgical procedure for a removal of the FB at the UWSD, with a failed outcome. The said procedure brought further pain and suffering.

Since the day of the Incident, Claimant has endured months of painful treatment and therapy, has taken numerous highly addictive prescription medications that have also adversely affected her general health. The Claimant incurred substantial out-of-pocket expenses due to these medical treatments.

The Claimant’s recovery period has been long, agonizing, and uncertain. To this date the treatment is not complete. Among other conditions, described in this letter, the pain medications prescribed by the doctors have had an adverse side effect on the Claimant resulting in depression and insomnia. The tension from being a burden on her family has negatively impacted the Claimant’s self-esteem, self-worthiness, and relationship with her children, friends, and in general. She is living with lost hopes, fear of the unknown, and no bright light for the future.

EXHIBIT 11

Before the Incident, Claimant has always been an active and very healthy person. Her goal was to maintain her health and youthful appearance. As record show, she exercised regularly several hours each day, outdoors and at the gym and that promoted a healthy lifestyle that she led all her life. She was a good-looking woman, who took care of herself and her body. The Claimant is a licensed cosmetologist and a natural beauty consultant. The Claimant and her daughter were planning to open a spa together. Since the Incident this plan was put on hold. It now appears indefinitely.

It is evident from the medical records that the Claimant's doctors are stating that at present time her condition cannot be assessed to determine if she reached a level of optimal medical improvement, until the FB is removed. Removing the FB involves certain risks, including a possibility of a lethal outcome. Some doctors confirmed that removing the FB will cause more harm than good.

Your Insured was negligent in his actions toward the Claimant in many different respects. He did not adequately warn the Claimant of the risks involved when performing the implant surgery, that the implants may cause severe pain or injury. The Insured stated that Claimant was in "good hands" and that he will treat her as if she was his own mother. This was very comforting and she trusted him with the procedure. From the Insured's records it is apparent that Claimant's mouth was not properly secured with special mouth inserts at the time of the Incident. Allowing the patient to "bite" on the drill as stated by the Insured. Had he put the insert in the Claimant's mouth the whole Incident may have been avoided.

The Incident with FB has severely impaired Claimant's normal everyday activities due to a potential risk of it migrating within her body (per Dr. Eggert's and Insured's statements). For this reason, Claimant has been advised by the oral surgeon Dr. Eggert to restrict the gym activities and therefore she was excused by the Insured from the gym activities for at least 6 months, which prolonged to be 3 years. This resulted in significant weight gain and poor overall health. Dr. Moorman described Claimant's body as "obese", "elderly", "very uncomfortable", "slumped", and "moaning in discomfort". Claimant is 69 years old. This change in lifestyle is very detrimental to her health.

Also, there is a significant risk that due to FB shifting from its position and "traveling" from one place to another it may hit a nerve, a vital organ or end up in the Claimant's brain. This anticipation has contributed to anxiety, panic, depression, and mental suffering of the Claimant.

The medical records reveal that Claimant is experiencing constant shooting pain in her mouth from the FB. Also, when she presses her gums together, the pressure on the FB sends "electrical" shock into her ear and proceeds into her head, and also down the neck into her right arm. This has caused her to stop eating normal foods, and switch to blended, grinded and very soft foods, which severely limited her nutrition supply and variety of food she can eat due to undue hardship in preparation, time, and cost.

EXHIBIT 11

Shortly after the Incident, Claimant was advised by the Insured that he will refer her to a qualified professional for removal of the FB. Per the Insured's referral, she consulted with Dr. Eggert, who advised her that there is a possibility of FB migrating within her body, and needs to be removed ASAP under controlled conditions, such as hospital setting. The records show that Dr. Keller knew this fact and agreed that the procedure had to be done in a hospital environment. Despite the fact, the Insured sent the Claimant to a dental resident (student) at the UW dental school, who had no sufficient knowledge nor practice in such a procedure, which caused Claimant to suffer another surgical trauma with a failed outcome in January 2013.

The Claimant states that she trusted the Insured that he knew what he was doing, but found out that he had no regard for her. This is apparent from your Insured's actions before, during, and after the Incident. The Insured has not properly informed that Claimant of the risks involved with the type of the procedure performed. During the surgery the Insured has failed to properly secure the Claimant's mouth allowing for the Incident to occur. After the Incident the Insured has failed to take proper action to remove the FB from the Claimant's body by sending the Claimant to a dental school for this complicated surgery to be performed by dental students. The Claimant has scheduled the surgery for the removal of the FB at the Swedish Hospital. However, the Insured and his Insurance carrier have refused the Claimant's claim, this prevented the Claimant from proceeding with the surgery.

Dr. Naumann, the oral surgeon, after performing an independent examination of the Claimant on Nov.19, 2014, stated in his report that the FB has in fact moved from its original position.

Another oral surgeon, Dr. J.Kanter, performed an independent examination of the Claimant's mouth cavity in August-November 2014. His notes outline "throbbing pain against the nerve where FB is located, frequent headaches and other somatic pain and tenderness on the floor of mouth after drill bit broke." In his letter to Beautiful Smiles Dentures he states his diagnosis and treatment plan for the Claimant: "Claimant's ongoing mouth pain is due to the injury to the mental nerve (a general somatic afferent (sensory) nerve which provides sensation to the anterior aspects of the chin and lower lip as well as the buccal gingivae of the mandibular anterior teeth and the premolars). He noted an "ambiguous" swelling on the floor of her mouth, which was treated with antibiotics with no success, proving the likelihood of neuropathic pain from the severe nerve injury." To conclude his diagnosis, he recommends the removal of FB involving the Claimant's neck surgery, followed by the removal of the implants that the Insured has placed in the Claimant's jaw bone, and subsequent bone drafting and implant replacement. Although, he recommends the Claimant to first achieve the pain-free state before continuing. Prescribes pain meds.

On January 9, 2015, the oral and maxillofacial surgeon Dr. Bobek from Swedish Maxillofacial Surgery, performed an independent examination of the Claimant, and observed a persistent swelling on the right side of the floor of her mouth. In his report, Dr. Bobek concluded that the Claimant's pain and swelling is from the FB. He stated that the Claimant is also suffering a nerve injury due to incorrect implant placement by the Insured, and this problem is highly unlikely to

EXHIBIT 11

be corrected at this point. He also concluded that the current dentures (made by the Insured) are also contributing to the trauma.

Dr. Bobek recommends that the Claimant will have to see a pain specialist or a neurologist, or will have to suffer another surgery to remove the implants, due to this problem. Another condition that Dr. Bobek also noted fibrosis around the FB and the related swelling. In his opinion, the fibrosis is caused by the trauma to the sublingual gland caused by the FB, which will require a separate surgical procedure to be corrected. As far as removing the FB itself, the surgery requires trans-cervical approach at in an OR setting, meaning that an incision will have to be made from the outside of the Claimant's neck, which inevitably will leave a visible scar, not to mention a possible risk of injury to the main artery due to the surgery.

According to the Claimant's physician Dr. Timmons, the constant pain in Claimant's mouth and the shooting pain coming from FB down her neck into the right arm, caused her to rely on pain killers, which further detrimentally affected her general health and normal activities. She has gained weight, became hopeless and depressed, lost interest for life. She was prescribed antidepressants and referred to the Seattle Pain Management clinic, where she was placed on several pain medications which are highly addictive. According to Dr. Nemuth, "there is a legitimate need for pain meds to optimize functioning and QOL." As of November 2014 the Claimant continues to suffer the persistent right-sided facial pain due to the said Incident.

The lack of exercise, severe depression, malnutrition, and related vitamin D deficiency (from home segregation) have lead Claimant's body to develop hypertension and pre-diabetes characterized by pain and numbness in the limbs. Consequently, she developed regular chest pains and shortness of breath. The Claimant wakes up in the middle of each night from a heart palpitation, and the symptoms are worsening. By May of 2014 the Claimant has been diagnosed with Hypoglycemia, which is symptomized with shaking and lightheadedness. The Claimant has been consistently experiencing Insomnia and trouble falling asleep, headache, and the essentially total body pain resulting from the combination of the problems. UWMC Cardiologist and a clinical assistant professor Alec Moorman, concluded that the Claimant's heart palpitations are consistent with beginning ectopy (an irregular heart rhythm due to a premature heartbeat, or premature atrial contraction), and is "induced by her stress and discomfort associated with the pain." According to him, many of the other symptoms that are described in the Claimant's medical records could be "accounted to depression and chronic pain disorder that she is experiencing."

The Claimant has been treated by Dr. C. Requiena for depression and insomnia. Claimant's regular physician Dr. Timmons has referred her to Pain Management and Behavioral Health, to address her underlying chronic pain syndrome and depression which, in his opinion, were "exacerbated by her ongoing dental problems."

During the Claimant's Psychiatric Assessment of July, 2014, she experienced depressed mood, insomnia, appetite change, energetic/fatigue, loss of interest, anhedonia, isolation/withdrawal,

EXHIBIT 11

poor concentration, memory difficulties, feelings of helplessness, crying spells, psychomotor retardation, excessive worry, and ruminations.

In January 2015, The UW cardiology department concluded the examination of the Claimant. Their finding were that The Claimant's symptoms, including the heart palpitations and aching pain all over the body "could be accounted for by depression or a chronic pain disorder."

The FB removal surgery estimates obtained by the Claimant state that the said operation will approximately cost \$31,000 (not including anesthesia and aftercare). The estimates for the latter were about \$10,000.

Conclusion:

The Claimant asserts that the Insured was negligent and failed to exercise proper and reasonable due care as follows:

1. The Insured, as a general dentist did not have a sufficient knowledge, education, experience, nor practice to perform the procedure in question.
2. The Insured did not properly secure the mouth of the Claimant during the procedure, causing the Claimant to bite on the drill.
3. The Insured has failed to remove the FB from the Claimant at the time of the Incident. In addition he did not have sufficient knowledge to remove the FB, nor was he prepared for the emergency outcome. Therefore, the Claimant asserts that Insureds dental facility is not properly set up for this kind of procedure.
4. The Insured has waited for 8 months before agreeing to send a Claimant to have the FB removed. However, even after doing so he failed to send her to a proper facility to have the said complicated procedure performed by qualified personnel. Instead sending the Insured to a dental school to have the surgery performed by dental students. Therefore, prolonging the Claimants pain and suffering by having another unnecessary operation being performed unsuccessfully.
5. The Insured failed to warn the Claimant that the implants may cause a nerve injury and/or severe pain. In addition, the Claimant was not properly advised by the Insured as her treating doctor of the risks involved when performing the said procedure for the Claimant to make an informed decision prior to agreeing to have the surgery.

EXHIBIT 11

6. The Insured failed to issue a refund of Claimant's payment for the botched procedure and reimburse the Claimant for out of pocket expenses incurred as a result of the Incident placing further undue financial burden on the Claimant.

It has come to our attention that prior history of such negligent behavior. There is a number of complaints with the Department of Health. There is a record of such cases being settled with prior patients.

Claimant's injuries:

The immediate injury from the Incident:

- Injury to the jawbone caused by FB
- FB left in the jawbone causing pain and discomfort
- Injury to the mental nerve caused by implants
- Trauma to the sublingual gland caused by FB, with related fibrosis

The consequential injuries and conditions:

- Additional injuries to the mouth, pain and suffering in attempt to remove the FB. (Claimant's mouth was lacerated by the dental students at UWSD in an attempt to remove FB). Prolonged healing time and discomfort.
- Persistent and chronic pain caused by the Incident requiring further treatment.
- The need to control the pain by highly addictive prescription medicines with adverse side effects.
- Inability to maintain a diet enjoyed by the Claimant prior to the incident. The inability to eat solid foods, due to the pain in the mouth.
- Inability to exercise and lead a healthy lifestyle causing weight gain and adverse effect on overall health (such as shortness of breath, developed pre-diabetes, heart palpitations, insomnia, depression, and other, see medical records).
- Subsequent inability to drive, go out, fulfill career dreams and goals, or perform well in society.

Your Insured's Liability: Your Insured's exclusive liability is clear. The Claimant suffered injuries due to the Insured lack to exercise due care prior, during and after the Incident as previously outlined.

Insured's actions were the direct and proximate cause of the injuries Claimant has sustained and her subsequent resulting injuries.

As a result of the said injuries Claimant has incurred the following:

Special Damages:

EXHIBIT 11

Past medical treatment and medications	\$65,000
Future surgery and medical treatment	\$150,000
Past out-of-pocket expenses	\$3,400
Future out-of-pocket expenses	\$9,000
Cost of implant procedure	\$7,600
Total amount of specials	\$235,000
General Damages:	
Emotional distress	\$70,000
Loss of consortium	\$50,000
Pain and Suffering	\$150,00
Total amount of specials	\$270,000
Total Damages:	\$505,000

There is really nothing to argue about, and no reason this claim should not settle short of suit. Further, the above-listed medical expenses are in line with our demand.

The Claimant will give full and final release of any and all claims arising out of any bodily injury suffered in exchange for payment of all applicable bodily injury demands made in this letter.

If you do not choose to strictly comply with any of these reasonable demands, then settlement will not be reached. If you require the Claimant to sign any releases or do anything else contrary to what is contained in this demand, it will be interpreted as an intentional act on your part and a rejection of this offer to settle the claim.

Should you require additional time or documentation, please let the Claimant know immediately. The said request may be granted if there is reasonable justification for doing so. You can assume that unless there is good cause shown, there will be no extension given. If we do not hear from you by **November 20, 2015**, we will assume that you will be able to fully respond to all of our reasonable demands, everything listed above, and that you also have all information you need in order to properly evaluate this claim.

This demand is being made as a compromise offer, so as to reach settlement short of litigation. Reasonable minds would conclude that the value of the Claimant's claim is in excess of the settlement amount being proposed in this letter. The Claimant is compromising by offering to settle for less than the full value of her claim. If, however, all of our reasonable demands are not

EXHIBIT 11

met by the deadline stated herein, the Claimant will proceed with the lawsuit that has already been filed against your Insurance Company and withdraw the offer.

On occasion, carriers do not feel they are required to respond to a time limit demand. Industry standard would dictate otherwise. The carrier has an obligation under Washington law to fulfill its contractual obligation to its Insured. That means investigating claims reasonably and in a timely fashion. That also includes meeting reasonable demands made upon them.

The Claimant will not sign a release in advance of receiving funds. Do not attempt to send a release for signature without sending settlement funds. This will be taken as a counter to this offer, and will not be acceptable. There is no requirement under the law, or within the industry, for release to be signed in advance of proceeds on the settlement being paid.

We thank you for your anticipated cooperation.

Sincerely,

Tamara Zaitsev

A handwritten signature in cursive script that reads "Zaitsev T". The signature is written in black ink and is positioned below the typed name "Tamara Zaitsev".

Attachments: Medical Records

EXHIBIT 12

1 Tamara Zaitsev
15409 NE 12th St
2 Apt G-351
3 Bellevue, WA 98007
4 425-736-1266

5 Hon. William L. Downing

6
7
8 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
9

10 TAMARA ZAITSEV,

Case No.: 15-2-11270-8 SEA

11 Plaintiff,

DECLARATION OF TAMARA ZAITSEV
IN SUPPORT OF PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

12 vs.

13 SHAWN KELLER, DDS (SMILES BY DESIGN),

14 Defendant

15 Tamara Zaitsev states and declares as follows:

16 1. I am the Plaintiff in the above referenced case, am over the age of 18, am
17 competent to testify, and do so based on my own personal knowledge.
18

19 2. I disagree with Mr. Versnell's statements that the fact that I don't have an
20 attorney to represent me is the "predicament of her [my] own making". Mr
21 Versnell has no sufficient knowledge nor authority to make such claim (DEF.
22 REPLY I SUPP. OF MOTION TO DISSMISS).
23

24 I had two attorneys to represent me pre-litigation and both attorneys were not
25 willing to represent my needs, but were rather concerned with making a quick
26 paycheck for themselves. The first attorney Mr. Larry Longfelder had my case
27 for a year, and virtually nothing was done to progress the case. He was gone a
28 lot of time, and apologized a lot because supposedly his wife was sick with
29 cancer. I was very patient with him, but after a year of waiting I had to
30 demand that something was done for the progress of this case. Then Mr.
31
32

EXHIBIT 12

1 Longfelder lured me into a very quick mediation with the defendant's
2 insurance company, where I was forcefully persuaded to accept \$20,000,
3 which did not even covered a removal surgery of the broken drill bid that was
4 left in my jaw by the defendant. A had to discharge Mr. Longfelder, as he
5 made it clear that there was nothing else he could do for me.
6

7 The second attorney, LaDonna Jones accepted the case after much time was
8 wasted by Mr. Longfelder. However, she was not willing to litigate the case if
9 necessary. Since the 3-year deadline was approaching, she was pressing me to
10 settle the case below my medical expenses, which I considered not a fair
11 settlement. So, Ms. Jones withdrew herself from the case.
12

13 I believe that I have to be adequately reimbursed for my damages, and I did
14 not cause my unfortunate pro se status in this case. This was rather caused by
15 the two law attorneys who were trying to make a fast paycheck for
16 themselves, without any regard for my suffering.
17

18 3. In his declaration Mr. Versnell stated that ever since I filed the lawsuit, I have
19 not engaged in any settlement discussions with him (DECL OF J.
20 VERSNELL IN SUPP. OF DEF. REPLY IN SUPP. OF MOTION TO
21 DISMISS, P.4). His statement is not true. On October 15, 2015, Mr. Versnell
22 was served by Certified Mail USPS mail (Exhibit3), with my DEMAND
23 LETTER (Exhibit 4), and my 350-page MEDICAL FILE,
24 MEDICAL/PRESCRIPTIONS BILLS (available for the court upon request).
25 Mr. Versnell failed to reply to my demand to this day.
26

27 4. Due to the condition caused by the broken drill bid in my jaw, I have to
28 consult several medical specialist, and plan the removal surgery (s) . However,
29 due to the recent changes in the healthcare, my State medical insurance is not
30 covering the specialists that I need to see. The State insurance also refuses to
31 cover some of the necessary pain medications. I believe that the defendant's
32

EXHIBIT 12

1 insurance company has to pay for them, and not the State. I cannot receive
2 adequate treatment for my physical injuries.

- 3 5. I spoke to a Pro-bono attorney Shanika Weerasundara. She advised me to
4 request the court to preserve my rights until I find a proper representation. She
5 referred me to an attorney whom I am going to contact this week to see if he
6 will represent me in this case. Until then, I am asking that this case be
7 postponed or rescheduled until later date.
8

9
10
11 Respectfully submitted this 19 day of December 2015
12

13
14 Zaitsev Tamara
15 Tamara Zaitsev, Plaintiff
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EXHIBIT 14

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personal injury case ↑ ↓ ×

 **Elena** @ 11/24/15 Documents, Photos
Dear Mr. Moen, I was referred to you by Mr. Larry Garret I need a consultation about a personal injury/dental malpractice case/litigation AS...

 **Larry Garrett** (Garrett@holmancahill.com) Add to contacts 11/23/15 Actions ↓
To: 

I don't handle medical malpractice cases. You might try:

Gene Moen – 206-443-8600

He is highly regarded.

Sincerely,

Larry Garrett

 **Elena** 11/22/15


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personal injury case ↑ ↓ ×

 **Steven Shaw** (steven@shawlegalsolutions.com) Add to contacts 12/28/15 Actions ↓
To: 

I apologize for not getting back to you sooner. The attorneys I know who handle dental malpractice are the following:

Mike Wampold
PH: 206.624.6800 FAX: 206.682.1415
1501 Fourth Avenue Suite 2800 Seattle, WA 98101

Matthew D. Dubin
520 Pike Street, Suite 1425, Seattle, WA 98101
Phone: 206-462-4428 Fax: 206-973-1783

Karen Scudder
203 Madison Ave, Kent, WA 98032
Phone: 253-236-0793 Fax: 253-859-0440

Feel free to use my name when you call, and let me know if I can answer any other questions.

Steve

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EXHIBIT 15

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Your dental malpractice cases ↓ ×

Mark Leemon (leemon@leeroylaw.com) Add to contacts 2/03/16 Actions
To: [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]

I am sorry to be so late in responding. Apparently some requests for legal services came in when I was out of the office in December, and I missed them when I returned. We don't ordinarily do dental malpractice cases. You may want to try Larry Longfelder in Seattle. Best of luck

Mark Leemon
LEEMON + ROYER PLLC
2505 Second Avenue, Suite 610
Seattle, WA 98121
(206) 269-1100
(206) 269-7424 (fax)
leemon@leeroylaw.com

www.leeroylaw.com

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Website Inquiry ↑ ↓ ×

Gene Moen (gene@cmglaw.com) Add to contacts 11/24/15 Actions
To: [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]

Dear Ms. Zaitseva. I'm sorry, but my firm does not handle dental cases. I can't give you legal advice about service of process, although, in general, actual personal service on the defendant is required and serving the attorney would not be sufficient. However, I do not know the facts in detail about your situation, so, as I said, I cannot give legal advice. I sincerely hope you are able to obtain legal counsel and can pursue the case. With best regards,

Gene Moen
Chemnick | Moen | Greenstreet



January 1, 2016

Via email - ~~XXXXXXXXXXXXXXXXXXXX~~

Elena Zaitseva

Re: Potential dental negligence case regarding your mother

Dear Ms. Zaitseva:

This letter will confirm that we will not be able to assist you in this matter. The decision as to whether or not to take a particular case depends not only on the merits of the potential claim, but on the available time and resources of the firm. You should feel free to consult with another attorney.

The law in the state of Washington has a strict time limit for starting lawsuits. Under current Washington law, lawsuits based upon claims of dental negligence must be started within three years of the date of the negligent conduct, or within one year of the date you discover or reasonably should have discovered you have been injured by negligent conduct, whichever occurs last, and in no event more than eight years from the date of the negligent conduct. These deadlines could be changed in the future by our state legislature or by the U.S. Congress. There are additional requirements before starting this type of lawsuit. The determination of the actual deadline in a specific case at times can be a complex question. You should therefore consult with other counsel about representation as soon as possible.

Thank you for the opportunity to consider your claim. If we can be of help in any further matter, do not hesitate to call us.

Very truly yours,

PETERSON | WAMPOLD
ROSATO | LUNA | KNOPP

Michael S. Wampold

Attorneys

Jan Eric Peterson
Michael S. Wampold
Ann H. Rosato
Felix G. Luna
Matthew G. Knopp
Leonard J. Feldman
Mallory C. Allen
Tomás A. Gahan

Law Offices
2800 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1609

P: 206.624.6800
F: 206.682.1415

www.pwrlk.com
mail@pwrlk.com

EXHIBIT 17

Outlook.com interface showing an email from Karen Scudder (kscudder@greaneylaw.com) dated 12/28/15. The subject is "RE: Findlaw FirmSite Message From www.greaneylaw.com : Contact Us". The email body contains the following text:

Dear Elena,

Thank you for contacting me. I've read your email.

Unfortunately, due to my busy trial calendar, I am unable to take your mother's case. Please continue your search for legal representation.

Truly Yours,

Karen

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Outlook.com interface showing an email from Injury Helpline (info@injuryhelpline.com) dated 12/30/15. The subject is "Injury Helpline Confirmation". The email body contains the following text:

Dear Elena Za,

Thank you for submitting your contact information on Injury Helpline. A personal injury attorney will contact you soon. Please expect a call from us. For some phone service providers, the call might appear as a private number.

For your records, here is the contact information that we have.

Name: Elena Za
Telephone: 4257361266
Email address: yelenazaitseva@hotmail.com
Zip code: 98007

Thank you.
The Injury Helpline Team, Helping people connect with an Injury Attorney since 1984.

NOTE: If you do not receive a call shortly, Please call us at 1-866-973-1028. Calls during the weekend may experience some delay. Rest assured we will contact you!

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EXHIBIT 18

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Dental Malpractice ↑ ↓ ×

John Peick (jpeick@peicklaw.com) Add to contacts 12/31/15 Actions ↓
To: [REDACTED]

We are not your best option for a dental malpractice claim. I would recommend contacting John Greaney, a much more experienced dental malpractice practitioner. You should also consider your mother's options of a legal malpractice claim against her former attorney for not protecting her claim when she withdrew so close to the SOL deadline.

John Joseph Greaney JR

WSBA Number: 11252

Admit Date: 10/28/1980

Member Status: Active

PublicMailing Address: Greaney Law Firm PLLC
203 Madison Ave
Kent, WA 98032-4408
United States

Phone: (253) 859-0220

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personal injury case ↑ ↓ ×

Steven Shaw (steven@shawlegalsolutions.com) Add to contacts 12/22/15 Actions ↓
To: [REDACTED]

n...

Elena - I'm glad you reached out to me. I'm also glad Shanika had the confidence to refer you to me.

I do represent injury patients, but I rarely take malpractice cases because it is just not my specialty. However, I know many of the best ones in the state.

Would you be available to discuss the case tomorrow after 2pm? I am in a deposition before that.

My work number is 425-214-4946. Leave me a number and I will initiate the call to you when I am available.

Steve

Sent from my iPhone

On Dec 22, 2015, at 6:55 PM, Elena <yelenazaitseva@hotmail.com> wrote:

From: Elena <yelenazaitseva@hotmail.com>
Subject: personal injury case

..

EXHIBIT 19

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personal injury/dental malpractice case ↑ ↓ ×

Corbin Volluz (corbin@volluzlaw.com) Add to contacts 12/31/15
To: [REDACTED] Actions ↓

Dear Ms. Zaitseva,

Thank you for contacting me about the situation with your mother. I am sorry to hear she is going through this.

Under the circumstances, however, I must decline representation in this matter.

Have you tried Joseph Bowen?

He is a Mount Vernon attorney who does a lot of PI work.

His phone number is 360-336-6655.

He may be able to help you.

Please feel free to let him know I suggested you give him a call.

Sincerely,

Corbin

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personal injury/dental malpractice case ↑ ↓ ×

Sarabeth Levine (sarabeth@napierandgeorge.com) Add to contacts 12/31/15
To: [REDACTED] Actions ↓

Hello Ms. Zaitseva,

I'm so sorry to hear about your family's legal issues. Unfortunately, our office does not do malpractice cases. Please contact the Washington State Bar Association (WSBA) for a referral to a malpractice attorney. You can reach the WSBA at 800-945-9722.

Good luck and happy New Year!

Sincerely,

Sarabeth Levine

Paralegal to Napier & George, PS
3500 188th Street SW, Suite 430
Lynnwood, WA 98037
Telephone (425) 778-6666
Fax (425) 778-4519

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EXHIBIT 20

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need a pro-bono attorney to represent an senior ↑ ↓ ×

 **KCBA Pro Bono Services (PBS@KCBA.org)** Add to contacts 1/04/16 Actions
To: [Redacted]

Hello,

You can contact 2-1-1 which is a community information line that has information about free legal services in Washington state. Simply dial 2-1-1 the same way you would dial 4-1-1 or dial 206-461-3200.

You can also make an appointment to speak with an attorney for a half hour for free at one of our Neighborhood Legal Clinics. The attorney will not represent you in court, but may be able to give you some advice. To make an appointment call 206-267-7070 from 9am-12pm Tuesday-Thursday.

If you are looking to hire an attorney you can call our Lawyer Referral Service at (206) 267-7010 during business hours, 8:30 a.m. - 4:30 p.m., Monday - Friday. \$10 processing fee for Personal Injury, Criminal Defense, Worker's Comp. There is a \$45 referral fee for all other cases except SSI/SSDI appeals.

Sincerely,
PBS Staff

Abra Conitz
Pro Bono Services Program Coordinator
King County Bar Association
1200 5th Ave., Suite 700
Seattle, WA 98101

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RE: Findlaw FirmSite Message From www.peicklaw.com ↑ ↓ × ^

 **Athena Boyer (aboyer@peicklaw.com)** Add to contacts 1/04/16 Actions
To: [Redacted] Peick Co: Brittany Charlick

Hi Yelena,

I am very sorry to hear of the issues that you and your mother have gone through. We do not focus in dental/medical negligence and unfortunately do not have the capacity to accept your mother's case at this time.

I am sorry for the delay, our office was closed until today for the holidays.

If you need names of potential attorney's I am happy to give you some names. Please let me know. Best wishes.

Best,

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EXHIBIT 21

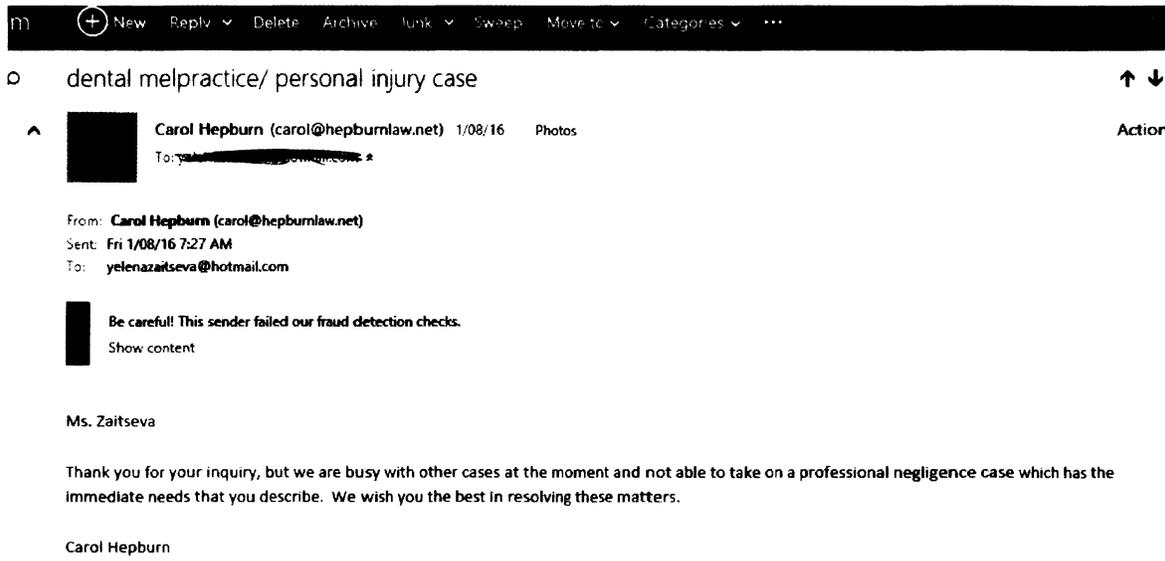
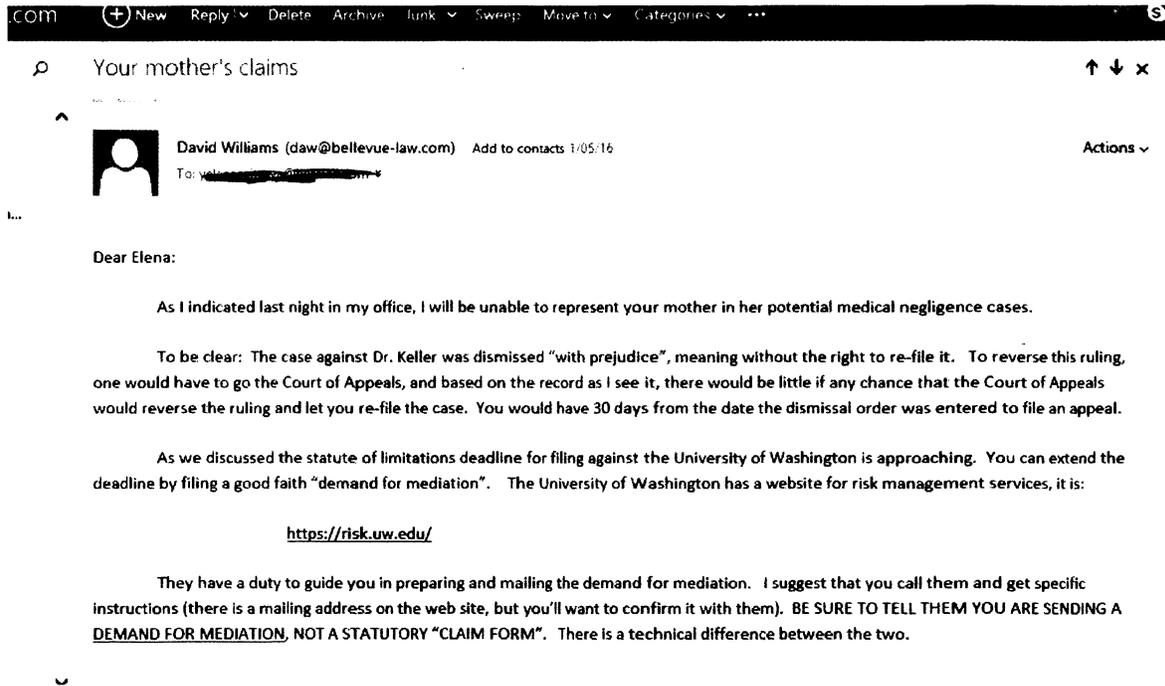


EXHIBIT 22

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RE: Findlaw FirmSite Message From www.miraclelaw.com ↑ ↓ ×

Andrea Nathan (anathan@miraclelaw.com) Add to contacts 1/08/16
To: yelenazaitseva@hotmail.com Actions ↓

Dear Elana,

...

I'm sorry but we cannot assist you with this matter.

Andrea Nathan
Miracle Pruzan & Pruzan

From: TLR.FindLaw.FirmSite@thomsonreuters.com [mailto:TLR.FindLaw.FirmSite@thomsonreuters.com]
Sent: Thursday, January 07, 2016 7:39 PM
To: Andrea Nathan <anathan@miraclelaw.com>; Steven Pruzan <spruzan@miraclelaw.com>
Subject: Findlaw FirmSite Message From www.miraclelaw.com

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Tamara ↑ ↓ ×

Donovan Flora (donovan@johnsonflora.com) Add to contacts 1/08/16
To: yelenazaitseva@hotmail.com Cc: elaine@johnsonflora.com Actions ↓

I am responding to your question about dental malpractice. I have quickly read the info you provided. We do not work on dental malpractice cases. I suggest you call Ann Rosato: 206 624 6800

I also left this info on a voicemail which I hope was your telephone number (425-736-1266). As I mentioned in the voicemail, I think there is a very significant statute-of-limitations issue. You mention limitations issue, as well, but there is also a WA statute that extends the three-year period by one year if you send a letter offering to participate in good faith mediation. The written request must be made within the three-year limitations period:

RCW 7.70.110
Mandatory mediation of health care claims—Tolling statute of limitations.

The making of a written, good faith request for mediation of a dispute related to damages for injury occurring as a result of health care prior to filing a cause of action under this chapter shall toll the statute of limitations provided in RCW 4.16.350 for one year.

Donovan Flora

JOHNSON FLORA PLLC
2505 Second Avenue, Suite 500
Seattle, Washington 98121
Telephone: 206.386.5566
Fax: 206.463.0676

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EXHIBIT 23

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🔍 Potential dental malpractice case ↑ ↓ ✕

^  **Mary Monschein** (mary@pwrllk.com) Add to contacts 1/12/16 Actions ▾
To: [REDACTED]

Ms. Zaitseva—

I spoke with you today and told you that Ann Rosato is not willing to take on your case. I was going to send you a letter confirming that, but I see in our contacts database that you sent an email to Ann's partner Mike Wampold a couple of weeks ago and you were already sent one of our decline letters dated 1/1/2016.

I am sorry we cannot help you.

Mary

Mary Monschein, Paralegal

Peterson | **Wampold** | Rosato | Luna | Knopp

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🔍 RE: Website Contact Form

^  **Denise Cottom** (denise@swansongardnermeyers.com) Add to contacts 1/19/16
To: [REDACTED]

It is our practice not take cases that are within a year of the Statute of Limitations. I'm sorry we cannot assist you in this matter.

Denise Cottom, *Litigation Paralegal* / denise@swansongardnermeyers.com / www.swansongardnermeyers.com

Phone (425) 226-7920 / Fax (425) 226-5168 / 4512 Talbot Road South, Renton, WA 98055

SWANSON GARDNER MEYERS PLLC

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1
2
3
4 COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

5
6 TAMARA ZAITSEV,

7 Appellant

8 vs.

9 SHAWN KELLER, DDS (SMILES BY DESIGN),

10 Respondent

NO. 74626-0

AFFIDAVIT OF MAILING BY ELENA ZAITSEVA

11
12 I, Elena Zaitseva, do declare that on August 18, 2016, I caused to be served via USPS
13 Priority Mail (tracking#9405511699000720372411) the following:

- 14 1. BRIEF OF APPELLANT and supporting exhibits.

15
16
17 on the following:

18
19 John C. Versnel, III

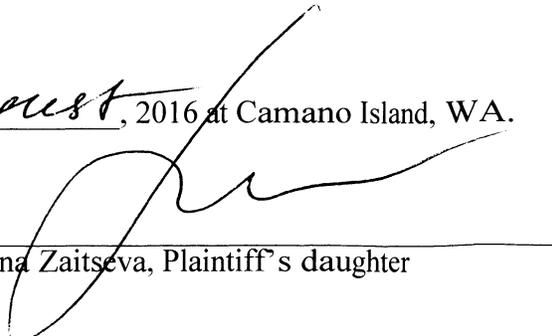
20 Lee Smart P.S., Inc.

21 1800 One Convention Place

22 701 Pike St

23 Seattle, WA- 98101

24
25
26 DATED this 18th day of August, 2016 at Camano Island, WA.

27
28
29 
30 Elena Zaitseva, Plaintiff's daughter
31
32

2016 AUG 22 PM 2:09

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON