

**IN THE UNITED STATES COURT  
DISTRICT OF KANSAS**

SAMUEL K. LIPARI,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. 2:07-cv-02146-CM
	)	
U.S. BANCORP and	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
	)	
<i>Defendants.</i>	)	

**Plaintiff's Response to Defendants' Golden Rule Letter Dated April 23, 2008**

Comes now the plaintiff Samuel K. Lipari having repeatedly been deprived of counsel by the defendants' predicate acts of RICO prohibited racketeering Hobbs Act extortion under color of official right and attempts to supplement his interrogatory answers.

**Interrogatory No. 1**

Your objections to my answers are not addressing the factual support but instead are misguided legal arguments that are not a failure or inadequacy of my response. Your statement that there is no antitrust claims in this current litigation is correct and overwhelmingly obvious to the point that your observation of such is at best frivolous or more likely yet another straw man fraud to obtain an unlawful sanctioning of me for being correct at law. You and your firm Shughart, Thomson & Kilroy, P.C. as agents of US Bank and US Bancorp tortiously interfered in the recovery of my property rights obtained in a mortgage contract and the contract for sale of lease made with GE. At the time your firm Shughart, Thomson & Kilroy, P.C. as agents of US Bank and US Bancorp tortiously interfered with the GE contracts and other property rights without a legal interest by US Bank and US Bancorp, the property rights included federal antitrust claims against GE.

I provided to you my business plan and its spread sheets I prepared with my industry knowledge, meeting the Missouri Supreme Court requirements for lost profit damages in its most recent decision on the subject. Jay E. Heidrick, if your firm Shughart, Thomson & Kilroy, P.C. is not providing you the resources to adequately research the law to professionally defend your clients or the time to read my pleadings where I repeatedly cite the controlling case law and apply it to the facts, maybe you should resign and represent US Bank and US Bancorp as a solo practitioner.

On or about 10/28/02 Medical Supply contacted US Bancorp's retained counsel and explained that there were questions about service and that Medical Supply was seeking to schedule a hearing that week for its requested relief to stop the harm it was suffering and to avoid a terminal outcome for the company. US Bancorp's counsel said he had to travel and was unsure of his schedule but by the next day he might know of a time he could make a hearing. Without hearing from the opposing counsel, Medical Supply became concerned and sent an email on or about 10/29/02 suggesting portions of the injunctive relief it seemed likely the two parties could agree on and explaining the harm it was suffering and what delaying the relief beyond critical dates would inflict on Medical Supply, its associates and customers.

**The Defendants' Acceptance of Liability For Medical Supply's Business Plan Damages**

The email explained the losses as follows: the damages of failing to receive the \$350,000 to \$450,000 it depended on November 1st and the resulting effects of that delay on its projected financials including lost profit of \$51,795,005.00, lost increase in average valuation of \$155,385,015.00, Candidate lost revenue of \$15,499,788.00.

The email explained that these injuries would be far greater if a December 1st deadline is missed. However, if the company does not recover from US Bank's denial of the escrow accounts the total third year losses of the company would be as follows: lost profits \$51,795,005.00, loss of increased company avg. valuation of \$155,385,015.00, Candidate lost revenue of \$15,499,788.00 and Customer losses of \$697,486,200.00.

On or about Wednesday 10/30/02, US Bancorp's counsel sent a letter to the court dismissive of Medical Supply's complaint and stating that it would oppose all requested relief.

**Interrogatory No. 2.**

I have misunderstood the disclosure requirements. I have supplemented the witnesses addresses I discovered, but I was looking them up online after April 15, 2008. Some of the addresses are in your possession and the possession of US Bancorp's co-conspirators and have not yet been served to me in discovery.

**Interrogatory No. 3.**

Samuel K. Lipari, Bret D. Landrith, Andrew Cesere, Susan Paine, Lars Anderson, Brian Kabbes, Doug Lewis, Jerry A. Grundhofer, Richard K. Davis, Becky Hainje, Ed Higgins, Kristen Strong, and the

defendants' Dorsey Whitney Attorney is Patrick J. McLaughlin a partner and co-chair in the corporate trust services of Dorsey & Whitney LLP.

I think your being unaware of Mr. McLaughlin proves the point that you have not done the required diligence to ethically represent your clients and that you have not read the settlement brief or even the filings in this case.

**Interrogatory No. 4**

I served an executed copy of the escrow agreement to you and to Magistrate Waxse as an exhibit to the settlement brief. It is also available for public viewing in Vol I of the settlement brief exhibits :

“Exb 6 Email of Brian Kabbes accepting written contract to provide escrow accounts and escrow agency services and instructing affixing his name and address to it 75”

<http://www.medicalsupplychain.com/pdf/Settlement%20Brief%20Evidence%20Exhibits%20Vol%20I.pdf>

**Interrogatory No. 5**

MSCI contacted an attorney, familiar with the healthcare supply chain research and development done by Sam Lipari at the law firm of Shook Hardy and Bacon and asked if his firm could act as escrow agent for accounts to be set up in US BANK. He said the bank is better prepared to provide escrow services and declined to act as escrow agent.

On or about Thursday 10/31/02, MSCI called US BANCORP's counsel explaining the necessity of the relief sought and specifically the relief requested under paragraph 66 seeking to stop US BANK from reporting negative information about MSCI under the USA PATRIOT Act. US BANCORP's counsel reiterated his belief MSCI needed to find another bank and that no liability existed. MSCI's counsel explained that Sam Lipari will not risk a hundred million dollar company that requires high level banking services to future damage from a secret USA Patriot Act report that has misinformation in it and would create a black mark preventing them from ever being able to do any business. US BANCORP's counsel said it would not agree to even just the relief sought in paragraph 66. MSCI asked US BANCORP's counsel if his firm would act as an escrow agent for accounts to be deposited in US BANK, since Shook Hardy and Bacon had declined to do so. US BANCORP's counsel refused to do so stating that US BANK did not owe any duty to MSCI.

Craig Evans is the Shook Hardy & Bacon Attorney

Patrick J. McLaughlin is the US Bancorp Counsel that refused to provide the escrow agent service as an alternative to US Bank.

Medical Supply approached the law firm Shook, Hardy, & Bacon to provide escrow agency services at US BANK to try to mitigate the injury caused by US Bancorp's interruption and refusal to deal. The firm declined because of concerns over the USA PATRIOT Act issue raised by US Bancorp. Medical Supply approached other candidates to provide escrow agency services but they also declined. Medical Supply found one other national bank in its region with the capability of providing the unique financing instrument it had created with US Bancorp but not in time for the November 1st funds Medical Supply depended on. Medical Supply also investigated US Bancorp's conduct in trying to control the capitalization of healthcare technology firms and suppliers and realized there were strong reasons to fear US Bancorp would continue to misuse the USA PATRIOT Act and make a "Suspicious Activity Report" against Medical Supply that would destroy the company's chances of ever obtaining the high level banking services it would need to provide the nation's hospitals with lower prices and competitive markets for medical devices and supplies. In June of 2004, Novation/ Neoforma, Inc. again stopped Medical Supply from entering the market for hospital supplies using exclusive dealing agreements with General Electric and GE's electronic marketplace cartel GHX, LLC. These agreements caused GE to break a written contract to purchase a commercial real estate lease from Medical Supply. The contract included Medical Supply's requirement to use the proceeds to capitalize Medical Supply's entry to market since it was under the extortion of US Bancorp threatened and malicious USA PATRIOT Act reporting.

GE And GHX, LLC acted against their own short term profit interest and in knowing coordination with Neoforma, Inc. in an intentional effort to deprive Medical Supply in June 2003 of its contracted or bargained for capitalization of \$350,000.00 to enter the market for hospital supplies, just as Neoforma, Inc. (Unknown Healthcare Entity) and US Bancorp, et al had through combination or conspiracy deprived Medical Supply of another \$350,000.00 obtained through the contract for escrow accounts in November 2002.

The Defendants Foreclosure of Medical Supply's Attempt Following Attempt To Enter Into the Market For Hospital Supplies and Hospital Supplies in E-Commerce.

While seeking a new corporate headquarters for Medical Supply in May 2002 Mr. Lipari discovered an unused building in the same Blue Springs suburb of Kansas City, Missouri. The building had been purpose built to house information technology workers and had the infra structure including adequate communications connections and an electric plant for Medical Supply's servers.

GE Transportation acquired the building and its transferable lease when it bought the railroad signal company Harmon, Inc. and got rid of its employees. GE Transportation sought to escape the \$5.4 million dollar liability of the remaining 7 year lease because of the \$50,000.00 to \$60,000.00 dollar a month payments and insurance on the building that had not been occupied for over 8 months with no sub lease offers. Previously the building had been under utilized while GE reduced Harmon's staff. The high monthly cost was making the subsidiary fail to meet GE's economic performance requirements and hurting the conglomerate's bottom line and share price.

On or about June 1st, 2002, Samuel Lipari, CEO of Medical Supply Chain, Inc. contacted the leasing agent Cohen & Essrey Property Management regarding a building located at 1600 N.E. Coronado Drive in Blue Springs, MO. The leasing agent indicated the building was already leased but that the lessee could and would like to sub-lease the building. The building was not occupied so Mr. Lipari made a verbal offer to sub-lease a portion of the building. The leasing agent declined his offer indicating the existing lessee would not accept anything less than leasing the entire building.

On or about April 1st, 2003 Mr. Lipari contacted the new leasing agent (B.A. Karbank & Company) in the event the new agent had different instructions regarding a sub-lease of the property located at 1600 N.E. Coronado Drive in Blue Springs, MO. The new leasing agent told him that GE was the lessee seeking to sub-lease the building due to their vacating the building after GE Transportation bought out of Harmon Industries. The building was still not occupied so again Mr. Lipari made a verbal offer to lease a portion of the building. The leasing agent declined his offer indicating GE Corporate Properties would not accept anything less than leasing the entire building.

On or about April 7<sup>th</sup> Mr. Lipari contacted GE and spoke with the GE property manager, George Frickie regarding Medical Supply's interest in sub-leasing the building. George Frickie indicated again that GE would not be interested in sub-leasing a portion of the building but rather would be interested in leasing the entire building. Mr. Lipari requested the name of the owners and Mr. Frickie gave him the name and

number of Barry Price with Cherokee Properties L.L.C. Mr. Lipari contacted Mr. Price, he was referred to Scott Asner who also had a substantial interest in the building. While speaking with Mr. Asner he provided Mr. Lipari the background and current details on the building lease with GE, terms and a price to purchase the building. The lease was transferable and GE was still obligated for 7-years out of a 10-year lease. Mr. Asner agreed to sell Medical Supply the building for the remaining balance of the GE 7-year lease (\$5.4 million) and provided Mr. Lipari with a letter of intent to sell the building to Medical Supply.

On or about April 15th, Mr. Lipari contacted Mr. Frickie with GE Commercial Properties and indicated that he had an interest in purchasing the building. Mr. Lipari ask Mr. Frickie if GE had an interest in buying out the remainder of their lease so that Medical Supply could occupy the building following the purchase. Mr. Frickie offered GE's lease payments for the remainder of 2003 (\$350,000) as a buy out offer.

On or about May 1st, 2003 Mr. Lipari tentatively contacted several local Banks, knowing that US Bank had threatened his company with a malicious USA PATRIOT Act report to keep Medical Supply from entering the hospital supply market where US bank was affiliated with Neoforma, an existing electronic marketplace for healthcare supplies. Mr. Lipari knew Medical Supply could not get a loan because of the threat and extortion, but knew he needed input from bankers familiar with the commercial real estate market in Blue Springs. Mr. Lipari felt Medical Supply could form a holding company to obtain the property without US Bank realizing he could enter the hospital supply market. Mr. Lipari spoke with Allen Lefko President of Grain Valley Bank, Pat Campbell branch manager of Gold's Bank and Randy Castle Senior Vice-President of Jacomo Bank. Each of the banks indicated a willingness to provide the mortgage because they felt the property was worth far more than the price offered by Cherokee Properties L.L.C., but the mortgage was too large for the regulatory size of their bank and they each suggested a national bank as an alternative. Due to US Bank's extortion and racketeering, including the pretext and very real threat of a malicious USA PATRIOT Act suspicious activity report (SAR) against Medical Supply since Mr. Lipari had tried to enter the hospital supply market in October of 2002, Mr. Lipari knew he was unable to solicit a national bank for the real estate loan.

On or about May 7th, Medical Supply contracted a financial consultant (Joan Mark) for advice on how to put a mortgage together to buy the building which has a 7-year revenue stream from GE in the amount of \$5.4 million, the identical amount offered to purchase the building and for which Medical Supply had a

letter of intent from the owner Cherokee Properties L.L.C. Mrs. Mark suggested Mr. Lipari propose a mortgage arrangement directly to George Frickie with GE Corporate. Mrs. Mark explained how a purchase of the \$10 Million dollar property for \$5.4 Million was a great deal for any mortgage lender. Mrs. Mark also explained if GE provided a \$5.4 million dollar mortgage on a \$10 million dollar property and eliminated a \$5.4 million dollar lease obligation that GE would directly benefit from a \$15 million dollar swing to their balance sheet.

Without realizing the existence of a combination and conspiracy between the Defendants, including the existence of a secret market allocating and tying agreement between Neoforma, Inc. and G.E and Premier's electronic market place, GHX, LLC. Samuel Lipari prepared an offer on the building for GE Transportation.

The afternoon of May 15th, Mr. Frickie responded, leaving a taped voicemail message and stating he had spoke with the business leaders at GE corporate and that they will accept Medical Supply's proposal.

May 15th 2003-George Frickie

"Bret, George Frickie, ah.... I know I sent you an email saying that my counsel way out ah...and I followed up with another email but I spoke to the business leaders and we will accept that transaction ah... let's start the paper work ah... if you want to do some drafting of lease termination or if you would like us to do that, give me a holler 203-431-4452."

The second e-mail Mr. Frickie referenced on the phone conversation explicitly stated that GE would accept Medical Supply's proposal and initialed the written acceptance in addition to the electronic signature file for the e-mail:

From: Fricke, George (CORP) To: Bret Landrith Cc: Newell, Andrew (TRANS) ; Payne, Robert J (TRANS) ; Davis, Tom L (TRANS) ; Jakaitis, Gary (CORP)

Sent: Thursday, May 15, 2003 6:05 PM

Subject: RE: Lease buyout GE/Harmon building Bret, I would like to confirm our telephone conversation in that GE will accept your proposal to terminate the existing Lease. Robert Payne GE Counsel will start working on the document. He is out of the office until Monday 19th. GCF

On or about May 20th, 2003, Medical Supply was given a walk through of the property to inventory the buildings furniture and fixtures and discuss building maintenance and operational procedures. Tom Davis, the property manager for GE Transportation in Blue Springs and John Phillips, the GE Transportation building maintenance engineer provided the three-hour walk through in addition to the building maintenance and operational procedures. John Philips also provided the blue prints of the building and allowed me to make copies. Mr. Lipari returned the original blue prints after he made copies. They both stated they were being dismissed from employment by GE since they would no longer be necessary.

On May 22nd, 2003 Mr. Lipari spoke with Doug McKay with GE Capital who had called earlier that week with regard to the mortgage outlined in Medical Supply's proposal. Doug asked that Mr. Lipari send our company information regarding the mortgage. Mr. Lipari indicated that he could meet him the following Tuesday because Medical Supply had a loan package for him that included its financials, the proposal that George Frickie and GE's business leaders accepted, the letter of intent from the owners and our Dunn & Bradstreet report showing Medical Supply's good credit and strong financial condition. Mr. Lipari gave the information to McKay and McKay indicated he needed to speak with GE Transportation to see how they wanted to handle the terms of the accepted proposal.

On or about June 2nd, 2003 Mr. Lipari called McKay to see how they were doing on closing and McKay indicated that the person he needed to speak with was at corporate and that he needed to speak with him before moving forward.

As the June 15, 2003 closing date approached, medical Supply had not received any definitive closing date so Medical Supply's corporate counsel called and sent George Frickie an email stating that a delay in closing would not effect the lease buyout of \$350,000. Medical Supply's counsel later again called Mr. Frickie when he received no response and Mr. Frickie became extremely angry and hung up the phone. Medical Supply then proceeded to speak with GE's counsel Kate O'Leary to determine if the contract had been repudiated. Supporting statutes and the antitrust basis and damages implications were explained to Ms O'Leary.

Medical Supply gave GE a deadline to June 10th to clarify whether there had been a repudiation. Mrs. O'Leary later faxed a letter on the 10th requesting that Medical Supply not speak to anyone at GE and that any correspondence relating to this matter be directly to her. Medical Supply then emailed a letter stating that if no earnest money were deposited to indicate the contract was not being repudiated, Medical Supply would file on June 16th for antitrust and breach of contract.

George Fricke, property manager for The General Electric Company who Medical Supply had been told by Fricke and his agents, was the authority for the building at 1600 NE Coronado Dr. telephoned Medical Supply Chain's Missouri headquarters and placed a message on its answering machine stating he had been instructed by "business leaders" to accept Medical Supply's proposal and he was calling to do so. Then, George Fricke sent a written acceptance via e-mail with his initials added a signature at the end of the email

message. No terms were disputed and the acceptance confirmed The General Electric Company would make its subsidiary GE Transportation LLC. pay \$350,000 for the buy out of the lease and its GE Capital subsidiary provide the \$6.4 million dollar mortgage and closing at 5.4% for twenty years with a first year moratorium on payments. In diversity actions, the Court applies the substantive law, including choice of law rules, that Kansas state courts would apply. See *Moore v. Subaru of Am.*, 891 F.2d 1445, 1448 (10th Cir. 1989). Kansas courts apply the doctrine of *lex loci contractus*, which requires that the Court interpret the contract according to the law of the state in which the parties performed the last act necessary to form the contract. See *Missouri Pac. R.R. Co. v. Kansas Gas and Elec. Co.*, 862 F.2d 796, 798 n.1 (10th Cir. 1988) (citing *Simms v. Metropolitan Life Ins. Co.*, 9 Kan. App. 2d 640, 642-43, 685 P.2d 321 (1984)). George Fricke's signed written acceptance referenced the proposal he had received from Medical Supply earlier that day. The set of documents then became an bilateral contract completed with the last act exchanging mutual promises (*D.L. Peoples Group, Inc. v. Hawley*, — So.2d — (2002 WL 63351, Ct. App., Fla., 2002) enforceable for the sale of the lease interest and the benefit of the bargain obtained by Medical Supply under its clear and complete terms meeting the writing requirements of a real estate purchase contract in Missouri and the writing and definiteness requirement of a credit agreement under Missouri statute RMS 432.045.2 .

The formation of an enforceable contract in a set of documents created in correspondence is well settled See *Estate of Younge v. Huysmans*, 127 N.H. 461, 465-66, 506 A.2d 282, 284-85 (1965). Since state law requires a writing, the e-mail acceptance and signature of George Fricke is valid and enforceable under 15 USC §7001, the federal Electronic Signatures in Global and National Commerce Act, widely known as "E-SIGN." Section 101(a) of E-SIGN states that "(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."

Medical Supply had performed as required, introducing itself to the City of Blue Springs Economic Development, and committed to purchase the building from its owner in reliance on the contract with GE, GE Transportation made open partial performance of the contract by opening the building for a three hour briefing on the operation and maintenance of the building's complex systems. This briefing was made by

GE Transportation's Blue Springs property manager and the building's maintenance engineer, both of whom told Medical Supply's CEO Samuel Lipari that they had been terminated and will be leaving employment with GE Transportation the following month because they were no longer needed.

GE Capital partially performed as required and made an appointment with Samuel Lipari in its Overland Park, Kansas office where Mr. Lipari took the building's blueprints furnished him by GE Transportation, the building's physical description and photo furnished by George Fricke of GE corporate and Medical Supply's corporate records for the loan.

The GE Capital loan officer Douglas McKay discussed the terms and questioned Mr. Lipari in detail about the lawsuit. Mr. Lipari explained why under the threat by US Bank of a malicious USA PATRIOT Act suspicious activity report, Medical Supply could not risk going to a bank until the lawsuit was settled.

Douglas McKay agreed the USA PATRIOT Act had no valid relationship to Medical Supply's involvement with US Bank and stated he would obtain the additional requirements GE Capital required from George Fricke and GE Transportation. McKay indicated it could take longer to close but he would check into it.

Medical Supply communicated to its stakeholders, business associates, potential customers, and the owners of the building that it had obtained the financing and made commitments in reliance of GE's performance on the contract.

No letter similar to that which Mr. McKay had described was received from GE Capital by the June 15th contract deadline and no notice of rejection of credit has been received. George Fricke communicated by phone and e-mail that the GE Capital performance would be at arm's length but since the financing was the benefit bargained for by Medical Supply, this did not contradict the contract. When doubts about GE's intent to honor the contract arose, counsel for GE, GE Transportation and GE Capital each refused to confirm the repudiation.

The proposal accepted by George Fricke on behalf of GE's business leaders contained the executive summary of Medical Supply's business plan, including an explanation of the antitrust lawsuit with US Bancorp, et al and the financial projections for Medical Supply's entry into market. Under *Anuhco, Inc. v. Westinghouse Credit Corp.*, 883 S.W.2d 910 (Mo App 1994) GE is responsible for the expectation damages of the forward projections that it had accepted at the time it entered into contract with Medical Supply. Medical Supply is able to prove its projected profits with reasonable certainty. Lost future profits

may be used as a method of calculating damage where no other reliable method of valuing the business is available, see *Albrecht v. The Herald Co.*, 452 F.2d 124 at 129 (8th Cir. 1971) cited for this purpose by 10th Cir.

GE, the parent company of GE Transportation was a dominant medical device manufacturer and medical equipment and electrical equipment supplier to North American hospitals. GE ceased to be a manufacturer and became a distributor of parts, assemblies, products, systems and credit services to hospitals. GE established monopolies in many product lines for hospitals but feared other distributors would bypass GE and buy the same parts, assemblies, products, systems from foreign sources and sell them to North American hospitals at lower prices in competition with GE. To prevent this, GE made alliances with the dominant distributors for hospitals called GPO's including the Defendant Novation, LLC because they were intended to be group purchasing cooperatives (organizations). GE and the other dominant manufacturers gave the management of these GPO's including the Defendant Novation, LLC kickbacks to prevent direct competition in distribution, preserve their loyalty and to protect the inflated prices. However, GE saw that the captive customers of these GPO's including the Defendant Novation, LLC were growing dissatisfied at the inefficiency and the failure to achieve group purchasing discounts. To protect against other market entrants, GE formed Global Health Exchange LLC. as an electronic market place promising online distribution at lower prices to hospitals. GE owns shares of stock in the privately held company and provided the initial capitalization. As an alliance of a handful of dominant manufacturers (now distributors) the actual goal was to preempt the fledgling e-commerce companies from entering the electronic distribution of hospital supplies.

G.E, had also formed its own electronic marketplace called Global exchange and continues to market hospital supply products over the internet from its corporate web site as a distributor of other manufacturers' hospital supply products.

GE found the technology of GHX, Inc. was inadequate to outperform new entrants and aligned itself with the Defendant Neoforma, Inc., the electronic marketplace co-opted by the dominant GPO's including the Defendant Novation, LLC in an alliance to exchange data among suppliers to enforce cost structures as inflated as those of the GPO's. GHX, LLC at the direction and approval of GE has retaliated against suppliers who endanger the marketplace with competitive prices. GHX, LLC. at the direction and approval

of GE has excluded competitors including Retractable Technologies, Inc. and Masimo for failing to give kick backs to the cartel. Death and injury resulted from the failure of hospitals to obtain these medical devices.

GHX, LLC. at the direction and approval of GE in a conspiracy and combination with the Defendants has excluded Medical Supply Chain, Inc. from entering the market by not allowing Medical Supply to offer GE Capital Healthcare credit to its potential customers in April of 2002, and by refusing to offer US Bancorp Piper Jaffray services to Medical Supply in June 2002 in a conspiracy with the Defendants and by repudiating essential escrow contracts required by Medical Supply to capitalize its entry into market in October 2002. (US Bancorp has interlocking directorships and an exchange of directors with the two dominant GPO founders of GHX LLC.; the Defendant Novation and Premier. US Bancorp helped the Defendant Novation acquire control of the Defendant Neoforma and partner it with GHX LLC. creating a monopoly of over 80% of healthcare e-commerce).

GE at the direction of the Defendants and their nondefendant co-conspirators including Neoforma and Novation LLC caused its subsidiary GE Transportation to repudiate the contract to buy the lease from Medical Supply, sacrificing \$15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, LLC. and Neoforma. The market is worth 1.8 trillion dollars. GE acted on the tremendous windfall to preserve its monopoly. George Fricke is GE Corporate's property manager.

**Interrogatory No. 6**

The US Bank written Five Star Guarantee, The US Bank checking account written contract, bank statements, The US Bank written credit line application, the electronic contracts contained and transmitted in email, the voice recordings, the filings in the litigations between the parties and the business plan with tractor the marks of the US Bank Noland Road branch fax machine.

Samuel K. Lipari, Bret D. Landrith, Andrew Cesere, Susan Paine, Lars Anderson, Brian Kabbes, Doug Lewis, Jerry A. Grundhofer, Richard K. Davis, Becky Hainje, Ed Higgins, Kristen Strong, and the defendants' attorney Patrick J. McLaughlin of Dorsey & Whitney LLP.

**Interrogatory No. 7 (Fiduciary Duty)**

The US Bank written Five Star Guarantee, The US Bank checking account written contract, bank statements, The US Bank written credit line application, the electronic contracts contained and transmitted

in email, the voice recordings including the 2003 recording of Landrith, DeMarea and Ruse in the first case management conference, the filings in the litigations between the parties.

Samuel K. Lipari, Bret D. Landrith, Andrew Cesere, Susan Paine, Lars Anderson, Brian Kabbes, Doug Lewis, Jerry A. Grundhofer, Richard K. Davis, Becky Hainje, Ed Higgens, Kristen Strong, and the defendants' attorney Patrick J. McLaughlin of Dorsey & Whitney LLP.

From the *Lipari v. US Bancorp et al* complaint:

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235. US BANCORP through its investment banking subsidiary US BANCORP PIPER JAFFRAY dominated the capitalization of health care technology companies.

236. US BANCORP through its relationship directly with Novation, LLC and through its subsidiary US BANCORP PIPER JAFFRAY's relationship with Novation, LLC dominated the access to the nationwide hospital supply market.

237. Until April 28, 2003 when US BANCORP PIPER JAFFRAY settled charges it was guilty of aiding and abetting efforts to defraud investors and manipulating investment research, US BANCORP through its investment banking subsidiary US BANCORP PIPER JAFFRAY was able to dominate investor research and exclude potential competitors to

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Novation, LLC's control of the market for hospital supplies from having a market for securities.

238. SAMUEL LIPARI placed his trust in US BANK and US BANCORP to provide escrow services to MSCI in his plan to alternatively capitalize MSCI's entry into the market for hospital supplies through the participation of its certification candidates who would function as MSCI's marketing representatives.

239. US BANCORP's corporate trust division acting through US BANK was a trustee of the highest order to MSCI by virtue of US BANK's contract with SAMUEL LIPARI to provide MSCI escrow services.

240. In forming the trust relationship with MSCI, US BANK and US BANCORP asked for and obtained from SAMUEL LIPARI all of MSCI's confidential information relating to the escrow accounts and MSCI's certification candidates.

241. US BANK was a trustee of the highest order to MSCI by virtue of US BANK's officer Douglas Lewis' promise to SAMUEL LIPARI that US BANK would safeguard MSCI's confidential business plan.

242. US BANCORP and US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as an escrow services provider to MSCI when US BANCORP and US BANK improperly

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used a change in federal law as a pretext to breach US BANCORP and US BANK's agreement to provide escrow services.

243. US BANCORP and US BANK violated the high standard of

conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as an escrow services provider to MSCI when US BANCORP and US BANK fraudulently claimed a change in federal law excused their breach US BANCORP and US BANK's agreement to provide escrow services, knowing the change did not render performance impossible and knowing that a change in law or regulations did not relieve the defendants of their duty to perform under the escrow contract.

244. US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as custodian of MSCI's confidential trade secrets contained in MSCI's business plan and MSCI's certification program when it reproduced the trade secrets and transmitted them to US BANCORP offices outside of the Independence, Missouri office of Douglas Lewis.

245. US BANCORP violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as custodian of MSCI's confidential trade secrets contained in MSCI's business plan and MSCI's certification program when it received the MSCI trade secrets transmitted to them by Douglas Lewis and disseminated them to hospital suppliers and GPO's competing with MSCI.

246. US BANCORP and US BANK violated their duty of undivided loyalty to MSCI and to the escrow beneficiaries thereof by engaging in self-dealing by requiring the escrow account funds to be invested in a fund owned by US BANCORP without disclosure of US BANCORP's interest.

#### **Interrogatory No. 9**

I have no other information to add except I will reserve this document upon you.

#### **Interrogatory No. 10, 16, 17 (Theft of Intellectual Property)**

The Defendants' Theft of Medical Supply's Intellectual Property

Realizing there was no immediate solution to this matter, and the fact that a previous business model pricing system developed by Samuel Lipari in 1995 was appropriated by HSCA, Medecon and Cardinal Owen Healthcare through exploitation of a confidential business relationship and then taken later by many other GPOs.

On or about 11/6/02 Samuel Lipari visited US Bank, Noland road branch to retrieve the documents left by him following the meeting with Doug Lewis on 10/10/02. Doug Lewis gave the documents back to Samuel Lipari.

Samuel Lipari specifically ask if the documents were copied or faxed and Doug Lewis said he put all of the information in his analysis and Samuel Lipari left the bank. Upon returning to Medical Supply's office

Samuel Lipari Inspected the documents and found that the binders had been separated and copies or faxes had been made of the associate program and the business plan documents.

There were also tractor marks from a copy or fax machine on the back of the entire associate program and the business plan pages.

The documents relating to the escrow agreement associate program application, and certification contract were not faxed or copied. There were no marks on the back of these documents.

Medical Supply became fearful of where these documents were sent and who has reviewed them. The documents that were copied or faxed contain all confidential details to the business, business model, management team, investors, industry experts, advisors, business practices, market strategies, revenue model, service structure, formula, algorithms and financials including 5 year details, 5 year condensed and break even analysis.

Samuel Lipari became fearful this information would fall into the wrong hands further blocking or eliminating entry to market.

#### **Interrogatory No. 11 (Fraud)**

##### **From the *Lipari v US Bancorp et al* Complaint:**

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209. The Defendant US BANCORP injured MSCI with a fraudulent misrepresentation material to their transaction of escrow agency and escrow account hosting through US BANK for MSCI and SAMUEL LIPARI.

210. Then Brian Kabbes speaking as a Vice President of US BANK falsely represented to MSCI that US BANK and the commercial trust department would not perform as escrow agent or host MSCI's escrow accounts because of the "know your customer provisions" diligence requirements of the USA PATRIOT Act had come into effect and made it impossible for the bank to perform this service for MSCI.

208. The defendants' officers Lars Anderson and Susan Paine made this fraudulent misrepresentation through the defendant Brian Kabbes by directing him to give this reason to MSCI's chief executive officer, SAMUEL LIPARI.

211. The defendant US BANCORP's officer Andrew Cesere directed the defendants' officers Lars Anderson, Susan Paine And Brian Kabbes not to retract this fraudulent misrepresentation when it had been questioned by MSCI and SAMUEL LIPARI and to maintain the misrepresentation in  
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their capacity as managing speaking officers for US BANCORP NA, US BANK.

212. The defendants' officers Andrew Cesere, Lars Anderson, Susan Paine and Brian Kabbes caused this fraudulent

misrepresentation to be communicated to SAMUEL LIPARI with the intention to induce MSCI to refrain from enforcing US BANK's agreement to provide MSCI escrow agency services and escrow account hosting.

213. On 10-24-02 the defendants officer Brian Kabbes communicated to MSCI and SAMUEL LIPARI that US BANK's corporate trust division (US BANCORP) would not provide the escrow accounts because of the "know your customer" provision of the USA PATRIOT Act prevents them from providing the agreed upon escrow accounts.

214. Becky Hainje US Bancorp (Phone Message left on MSCI answering machine 10-24-02);

"Becky Hainje: Hi Sam this is Becky Hainje with US Bank I a... visited again with Brian Kabbes in the a... corporate trust area and a... ask him what would you need to provide in order to have the a... request for the escrow trust reviewed and he was very honest, he said a... really it does not look good, this is something that the bank would be willing to do and he doesn't want you to invest any more time in it with him, but he did give me a... the listing of the main reasons, the concerns that the bank had a... first of all was that of course this is an unknown start up business that a... did not have any prior existing relationship with the a... Bank a... that the principals involved with the business were people unknown to the bank as you mentioned they were National and he really had no idea, and but the 51

main reason is to know your customer "Patriot Act" that was enacted after 911, and which we really could not give all the correct answers a... on the course and the flow of money, so that's what the situation was a...I understand that your coming up with a unique way to finance and get a business off of the ground unfortunately this seems to be a day and an age where unique thinking outside of the box isn't a... is being, a...is very difficult to get anything going, and I apologize that I wasn't able to be of more service to you a...hopefully you will be able to get this going perhaps with Doug on financing, and I do wish you all the best, if you have any more concerns, please feel free to give me a call at 913-261-5725."

215. Brian Kabbes called back rather than Ed Higgins:

"Bret Landrith MSCI; "Yes Brian, this is Bret Landrith, returning your call.

Brian Kabbes US BANCORP; "Bret hey a...Lars Anderson wants to be on this call too, he is our new business development guy, do you mind if I get him on the line."

Bret Landrith MSCI; "No problem."

Lars Anderson US Bancorp; "Hey Bret, I got Lars Anderson, hey Bret."

Bret Landrith MSCI; "Nice to speak to you"

Lars Anderson US BANCORP; "Susan Pane is here also here in the office a...

Brian Kabbes US BANCORP; "I report to Susan Pane and Lars

is our new business development person, now you had called Andy Cesere yesterday.“

Bret Landrith MSCI; “Yes I didn't realize when I last spoke to Brian that we had already sent out the escrow agreements that he approved, am of course.”

Lars Anderson US Bancorp; “Who approved?”

Bret Landrith MSCI; “Brian Kabbes, he works there in your office, I think he is in front of you, a... of course it is sort of inherent in an escrow customer that somebody is seeking an escrow account because there is not a sufficient establishment of trust yet so between the parties and realizing that we are going to have to change the escrow account contracts with the, our ten best candidates that we've chosen who will produce the most revenue for our business in it's first year in market a... that became a substantial issue for us and I didn't realize that when I last spoke to Mr. Kabbes.”

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Lars Anderson US Bancorp; “Yeah, we were wondering how obviously calling Andy Cesere a...”

Bret Landrith MSCI; “well a...”

Lars Anderson US Bancorp; “as you were not happy with our decision not to move forward on the transaction to get a hold of management at the bank that runs our overall unit.”

Bret Landrith MSCI; “a... Mr. Kabbes was very helpful, he suggested that we go to some local bank, you know some big bank hasn't bought up like you all and taken and run off the staff that knew anything, but a...he a... was also not clear on why we had sought a trust account at US Bank, because he didn't see why we didn't go to our own bank, of course you are our bank and have been since about April, the first corporate account we ever opened was with you all.”

Lars Anderson US Bancorp; “Sure”,

Brian Kabbes US BANCORP; “I said that when I said that I said your local bank, I didn't know it was with US Bank.”

Bret Landrith MSCI; “Who has really accelerated there a level of customer service just recently in the former First Star Bank, you guys took over and occupied, and now they actually connect us with the people that can provide the services they say they have, and that is how come our local bank forwarded us to your Trust Department.

Lars Anderson US Bancorp; “Got yea...Well then no doubt nobody questions about whether you have an account or whether, you know we can't handle this type of transaction generally, the question centers around when did we commit to this transaction specifically and Brian and I have been talking and we don't know at any point where we specifically said we are on board a... we were trying to evaluate the transaction therefore looking at some of the specifics of the document and what our duties were.”

Bret Landrith MSCI; “I don't think we need to go into minutia over that right now I think the chronology will come with the demand letter a...but we understood that you knew the purpose and why we kept contacting you in getting the second change approved, by the time you made the

negative decision you also had our business plan and that's pretty serious."

Lars Anderson US Bancorp; "We have not divulged your Business Plan to any body, there is no confidentiality issue here."

Bret Landrith MSCI; "well a..."

Lars Anderson US Bancorp; "Where did we ever accept the transaction, we never provided you pricing, we never

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provided you a bid and we certainly never signed off on the escrow agreement."

Bret Landrith MSCI; "we had pricing and its oral, and this is Missouri, and this is a business contract in your regular line of business and we relied and depended on your exception that it was ok and we sent it out to our best people."

Brian Kabbes US BANCORP; "I'll tell you what Bret, you can talk with Sam, you can get him on the phone if you want, because when I went over numbers with Sam, I said by no means is this a done deal, I need to run it past some people, I told him that twice, so I discussed numbers with him, but I said to him twice, I we came to what would work for you."

Bret Landrith MSCI; "Sam is in the room now."

Sam Lipari MSCI; "Hi Brian, well Brian, I also had conversations with Becky Hainje, and Becky had indicated as well that your conversation with her according to the recording that I have of the conversation is that you guys, you or her or combination thereof, had no problem with this and it should be a slam-dunk, to quote her exactly."

Bret Landrith MSCI; "but, but before we go farther down this line, obviously you don't have your new business development guy in there so you can help document why it was good of you not to take on our new business and we are sort of flabbergasted that you got any reason not to take on our business and we are sorry we are with you, but we are with you for at least these ten people."

Brian Kabbes US BANCORP; "Excuse me"

Lars Anderson US Bancorp; "you do want, on what basis do you consider us to be with you guys, I mean in any cap... in this transaction."

Bret Landrith MSCI; "well we have our sole banking relationship with you and we have shared an incredible amount of trust with you and divulged our business practices model and everything to you and are are corporate financials, we knew that a large major competitor of ours is headquartered in St. Louis and we had no concept that there would be a conflict of interest issue, but a... a.....

Lars Anderson US Bancorp; "We don't have a conflict of interest."

Bret Landrith MSCI; "this comes out of left field that you are accusing us of being Arab terrorist or something and not wanting to set up a basic account your bread and butter services of your department, I think you are taking on other customers this year sometime, if you are still going to have a trust office in St. Louis, and we are sort of

surprised you are not taking us on and we can't imagine a reason for it.

Lars Anderson US Bancorp; "Ok, well I think Brian's conveyed..."

Bret Landrith MSCI; "well those are pretty bad reasons and those end up with a demand letter, and yes there will be extensive chronology and we will explain trust obligations and fiduciary duties and where we think we were in contract and we think we will have an explanation that wins."

Lars Anderson US Bancorp; "well we are not the right people to talk to about that, we are just..."

Bret Landrith MSCI; "all right well, like I said earlier, I don't see any point in having a discussion about that, obviously you guys provide a service, you got your new business development guy there on this phone call, either you are talking to us about the services you are going to provide, or what we need to do to be your customer."

Lars Anderson US Bancorp; "so your, what your what are you stating at this point, that you are going to..."

Bret Landrith MSCI; "we got ten people that..."

Lars Anderson US Bancorp; "to force us to provide these services, or what, I don't understand now what you want."

Bret Landrith MSCI; "your, your characterizing that as a threat, there are no threats here, our business future depended on these ten people for the next six months or year revenue, you took them out you didn't even threaten us before you did it, so we will try and save what we can, but probably since you got your team there you ought to think about how to make us a customer at least for these ten so that we can remediate this damage."

Lars Anderson US Bancorp; "well we certainly never contracted with you or these ten people."

Bret Landrith MSCI; "well I think we go to a referee on that, first you get the demand letter, you get to respond to your version and then we go to a forum where they will make a ruling."

Sam Lipari MSCI; "and, and if I might add something here, this patriot act, that was identified as a reason for not extending the escrow services to us might you guys explain how that applies to a company that has been incorporated and in good standing for three years in the state of Missouri, in addition to the fact that we have a trail of where the funds come from, we also have signatures on both financial and criminal discovery of these individuals where anyone can run a background check or financial background on these individuals. I mean I am just really concerned

why this patriot act was brought into this when we don't have anything to do with that.

Lars Anderson US Bancorp; "we were not trying to relate the Patriot Act specifically to your status of business or your integrity it only..."

Sam Lipari MSCI; "well according to Ed Higgins, he didn't see how this, where this even came from."

Bret Landrith MSCI; "what other customers has this been an

issue with for you and maybe you shouldn't be dealing with those types of customers?"

Lars Anderson US Bancorp; "The patriot act, when it was put in place, caused us to have a clear set of rules on how we take on business."

Sam Lipari MSCI; "well according to Ed Higgins, he doesn't think that the Patriot Act has anything remotely to do with Medical Supply Chain, and what we are trying to do here."

Bret Landrith MSCI; "but, since you mentioned it the other day, we started looking at who you got investments in, and you got some investments in some healthcare entities that are under the gun, they have either been indicated for anti-trust violations or illegal kick-back schemes and for us now looking at space alien excuse for not having our trust accounts hosted by you, we are starting to think conflict of interest explains it."

Lars Anderson US Bancorp; "yea, you know what...we are not sure...what's your..."

Bret Landrith MSCI; "yea, it is pretty serious and it goes beyond contract damages ok."

Lars Anderson US Bancorp; "we are not the right people to talk to if you..."

Bret Landrith MSCI; "I know you may not be the right people to talk about trust, that is why I was trying to get your Vice Chairman, still haven't gotten to him, hopefully we can get this resolved today."

Lars Anderson US Bancorp; "we have already spoken with him and explained the situation, if you want to talk about other things in the Bank and our policies, whatever, I mean."

Bret Landrith MSCI; "no, I think we are going to focus on the Trust Department on US Bank for sometime here, it is probably a three-year process, but we will get to know each other quite well."

Lars Anderson US Bancorp; "do you have any other questions today?"

Bret Landrith MSCI; "No, you called us."

Lars Anderson US Bancorp; "well we were just returning your call to Andy Ceccere".

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Bret Landrith MSCI; "well I think he ought to personally talk to us cause we are still not getting a good explanation here."

Lars Anderson US Bancorp; "you are not looking for a good explanation you are looking to force us to do the transaction."

Bret Landrith MSCI; "no, you guys are the ones that don't even threaten you just kill, but we are still wondering how we can fix this."

Sam Lipari MSCI; "yea, we need, the problem here is that we have these a..., we basically have a..., out of 300 resumes we've pined it down to approximately 15 of which 10 we sent out the contract and the escrow and then you guys decide that you don't want to do the escrow over a Patriot Act that we don't have anything do with in the first place, now you claim that we do and be on, I...I still don't understand

where you are coming from that standpoint, but that is ok, in the mean time we tried to explain the situation and in fact we spoke with Ed, now who is Ed Higgins, Brian Kabbes US BANCORP; “He is ahead of personal trust in St. Louis.”

Sam Lipari MSCI; “Ok, well when we spoke with Ed, Ed seemed to feel as though this doesn't have anything to do with the Patriot Act, and basically, that is what we are saying, but I will indicate to you this....Becky had already established the fact that Brian you and her had talked last week and you didn't see any problem with it and if you didn't see any problem with it, you also suggested we make a change on #10 of the escrow agreement, so that we could leverage the asset to create a line of credit here at the local level, a... and everything seemed to be going in order and then all of a sudden you guys come back and say well you are not going to do it and you guys want to basically climb behind the Patriot Act as a basis for your decision, but Patriot Act doesn't have anything to do with what we are doing.

Brian Kabbes US BANCORP; “first off, that was a minor, that was part of our reason that was a minor reason...”

Sam Lipari MSCI; “well, if, if I quote Becky correctly this morning on her conversation, it was the fact that you don't know who all is involved in the Company, you don't know where these, where the Executives are that are running this company, in other words, you didn't have background information on the company itself to set up the trust, that, why is that any of your business in the first places as it relates to setting up an escrow? That's my question, and again I think we are going to find out that we are

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going to constantly come back to this issue where you have a conflict of interest and because of your knowing our business model and how we are arriving at generating revenue and so on and so forth that you basically kill our escrow, so by killing our escrow, especially in this particular situation on these ten that we have sent the information out to, you have essentially cut off at least \$300 and possibly \$450 thousand dollars.”

Bret Landrith MSCI; “but they were our ten best you know, former principal of IBM, and people we hand picked from all over the country at the best change of getting our hundreds of millions of dollars or revenue we count on in the next couple of years.”

Sam Lipari MSCI; “so all the conversations that we have documented since last week, have basically indicated that you had no problem in doing the escrow in the first place, in fact, Bryan you and I hammered out a Cost and Price and I would think...”

Brian Kabbes US BANCORP; “you are missing a very important part of that, twice I said to you I need to run this past something, and I stopped you and said it a second time.”

Sam Lipari MSCI; “ok well then let me ask you this Brian, why won't you just set the escrow up? Why? We don't have anything to do with the...a...”

Brian Kabbes US BANCORP; “well”

Sam Lipari MSCI; “there is a conflict of interest Brian, and you know there is, and I don't know why you are hiding behind the Patriot Act because the Patriot Act doesn't have anything to do with us, and you know it doesn't, and I am upset about it, I have spent two weeks working with Becky and Doug and You and everybody else, we've got basically \$300 to \$450 thousand dollars in the pipeline here that has been basically cutoff cause we don't have an escrow for these people to deposit and we are going to have to go back to them to try and save them if we can, and if we can't all this is really kind of a mute issue, it is just a fact that you don't want to do business with us because you have a conflict of interest with other companies that are doing banking business with you and frankly, you are right, if we ever get our business model off the ground, we are going to put them out of business, in fact, we may not have to the Justice Department has already indicted them, the Federal Trade Commission is after them, and not Medicare and Medicaid is after these GPO's. In addition to that, I have a glass pipe line to the New York Times, so if we really want to bring everybody into this thing and really nail down what is going on we can. All we asked for was a

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simple escrow so that we had a place to put our certification program candidates until they receive the weeks worth of training and we were able to identify whether or not they were going to be part of our organization or not. That is all we asked you people to do, instead, you guys have carried this thing farther, in other words, you want to know more information about the company, or you want to know about our background, or you want to know whose involved in this because there is a conflict of interest and that is the only reason you guys wouldn't provide these services. You would provide them for anyone else that walked in off of the street, but you have a conflict. So admit you have a conflict and let's move on. If you don't have a conflict, then set the escrow up.”

Lars Anderson US Bancorp; “Sam, this is Lars, Brian and I have talked about this since he bounced the transaction off of me to find out if we should do the deal and I couldn't see good reason to do the deal, but we have never talked about any kind of conflict of interest. I don't even know where you are coming from that standpoint.”

Brian Kabbes US BANCORP; “I don't have any idea what he is talking about.”

Bret Landrith MSCI; “I understand you are not admitting it yet, but you have not come up with a plausible non-protectoral reason to not set up escrow accounts. We are going to be looking at...”

Brian Kabbes US BANCORP; “we have to know our customers I have to have complete information and to know our customers and to know who we are doing business with.”

Bret Landrith MSCI; “I don't think a US Bank knows too much about US Bank, but in terms of, we filled out credit application you got business plan, you got all that

information, and once you got all that information then we are surprised you are not accepting the account.”

Lars Anderson US Bancorp; “we take on a trust business stand alone, and we have our own acceptance criteria and it's got nothing to do with what someone else got your financials or whatever....”

Bret Landrith MSCI; “like I said, I don't think US Bank is a coherent entity and I am really alarmed at some of the laissez-faire lack of control of practices that you have and I am sure we are going to see a lot of disturbing things, unless you are here are calling us to set up some trust accounts we will probably do our next communications in correspondence.”

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Lars Anderson US Bancorp; “Ok, well we are trying to explain to you today the reason why we are not taking on the account.”

Sam Lipari MSCI; “and what is that reason exactly, because we have gone””

Transcript of tape recorded telephone conference.

216. MSCI and SAMUEL LIPARI justifiably relied upon this fraudulent misrepresentation to not enforce US BANK's promise with the defendants' officer Brian Kabbes upon learning that US BANK was not going to provide the escrow services. MSCI and SAMUEL LIPARI justifiably relied upon this fraudulent misrepresentation and did not seek a reversal of the decision from the St. Louis office of US BANK's Commercial Trust department and instead contacted US BANCORP NA's Andrew Cesere, to try and resolve the problem, unintentionally angering Lars Anderson and Susan Paine.

217. The defendants US BANCORP NA and US BANK caused this fraudulent misrepresentation to be communicated to MSCI with knowledge of its falsity or reckless disregard as to whether it was true or false to the point of not checking and realizing that the increased duties of the “know your customer” for new account holders had not been enacted.

218. Or, in the alternative the defendants caused this fraudulent misrepresentation to be communicated with reckless disregard as to whether it was true or false to  
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the point of not checking and realizing MSCI and Sam Lipari were established existing customers of US BANK the increased duties of the “know your customer” did not apply to.

219. US BANK and US BANCORP intentionally deceived MSCI and SAMUEL LIPARI over the pretext of the USA PATRIOT Act as a false reason to breach the contract to provide escrow accounts because the defendants knew or should have known that it is well established that a change in federal law does not excuse breach of a banking contract.

220. US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI to prevent MSCI from competing with or otherwise disadvantage hospital suppliers US BANCORP PIPER JAFFRAY a wholly owned subsidiary of US

BANCORP had invested in and underwritten.

221. US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI to prevent MSCI from competing with or otherwise disadvantage US BANCORP PIPER JAFFRAY and US BANCORP relationships with the hospital Group Purchasing Organization (“GPO”) Novation, LLC.

222. US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI to prevent MSCI from competing with or otherwise disadvantage US BANCORP PIPER JAFFRAY and US BANCORP relationships with the hospital Group Purchasing Organization (“GPO”) Neoforma, Inc. (now acquired by GHX, LLC an electronic healthcare marketplace created by The General Electric Company, ”GE”)

223. MSCI and SAMUEL LIPARI relied on the Defendants fraudulent misrepresentation to MSCI and SAMUEL LIPARI’s detriment.

224. MSCI and SAMUEL LIPARI were harmed by the Defendants’ actions, resulting in the immediate loss of from three hundred thousand to four hundred and fifty thousand dollars and the inability to act on the opportunity it had planned to realize with the funds, including the recruitment and training of a nationwide network of independent representatives and the revenue the representatives would create through MSCI’s entry into commerce.

**From the answer to the second dismissal:**

**The Falsehood of the Reason Given For Not Performing**

The complaint details the misrepresentation of the defendants that the USA PATRIOT Act prevented from performing the contract and required their breach. The tape recording of US Bank officials reveals the USA PATRIOT Act was the reason given (later recorded and written communications demonstrate the defendants sought to deny they had used the USA PATRIOT Act as a pretext for not performing).

This is the lie described in the complaint. US Bank Trust Department used as a pretext a deliberately false misrepresentation of the USA PATRIOT Act law and then committed the fraud of claiming they did not use the USA PATRIOT Act and instead some other criteria selected after the breach was claimed to be the valid justification. The tapes prove fraud deceit and pretext not legal misrepresentation.

The pretext is independently demonstrable for each of the following reasons; 1) the “know your customer” reporting requirements contemplated under the act were not a barrier but a mere reporting mechanism; 2) the applicability of any reporting requirements to a domestic trust or escrow account was

speculative at the time the reason was given; and 3) the US Treasury Department which is responsible for regulating banks had published it was delaying implementation of the USA PATRIOT Act to banks.

### **1. New Frauds Under F.R. Civ. P. Rule 15 b.**

Despite their duty of good faith and fair dealing under contract and fiduciary duty to the plaintiff along with their duty of honesty to the tribunal, the defendants through their agent Shughart Thomson & Kilroy, PC continually commit frauds that are actionable by the plaintiff.

“Amendments to conform the pleadings with the issues actually tried are procedurally divided by Rule 15(b). The first part provides that if issues are tried with either express or implied consent, they are treated as if raised in the pleadings. The test of consent should be whether the defendant would be prejudiced by the implied amendment, i. e., whether he had a fair opportunity to defend and whether he could offer any additional evidence if the case were to be retried on a different theory. *United States v. 47 Bottles, More or Less, Etc.*, 320 F.2d 564, 573 (3d Cir. 1963).”

*Monod v. Futura, Inc.*, 415 F.2d 1170 at 1174 (10th Cir., 1969). See also *Horton v. Smith Intern., Inc.*, 944 F.2d 911 (C.A.10 (Utah), 1993).

The recent report of parties planning conference contained the following recounting of events which was included by the plaintiff over the objection of the defendants. However it was tried with implied consent and this court effectively over ruled the Magistrate’s ordered stay of discovery. The other factor from *Parreco v. Rental Housing Com'n*, 885 A.2d 327 at 334 (DC, 2005) that the opposing party directly articulate a defense is also met:

“On May 7th, 2007, Mark A. Olthoff KS lic. #70339, Andrew M. DeMarea KS lic. #16141 and Jay E. Heidrick KS lic #20770 falsely misrepresented the law to Magistrate David J. Waxse that the plaintiff’s complaint was barred by *res judicata* despite the express dismissal without prejudice identified in the complaint ¶ 32 , that Magistrate Waxse had jurisdiction to stay discovery despite the exclusive federal jurisdiction of the Tenth Circuit identified in ¶ 34 of the complaint and that the plaintiff lacked standing as an assignee to the rights of the dissolved corporation. Mark A. Olthoff KS lic. #70339 and Andrew M. DeMarea KS lic. #16141 had been previously served the clear controlling authority contradicting their misleading assertions in the Western District of Missouri, yet made the misrepresentations again in this court after the case was transferred as part of an intentional scheme to interfere with the machinery of justice. Magistrate David J. Waxse was deceived by the misrepresentation and in an order dated May 24th, 2007 suspended Discovery as an appropriate measure for a case likely to be dismissed. The plaintiff was injured by Mark A. Olthoff KS lic. #70339, Andrew M. DeMarea KS lic. #16141 and Jay E. Heidrick KS lic #20770 misrepresentations in having his redress continually postponed and thereby being prevented from entering the hospital supply market. This was fraud on the court. *Weese v. Schukman*, 98 F.3d at 553 (C.A.10 (Kan.), 1996).”

The above describes the defendants’ extrinsic fraud that has so plagued the litigation between the parties. The violation of candor to the court is worse by an attorney misrepresenting the law than by misrepresenting fact. Only the former is actionable as fraud on the court.

The defendants' present motion to dismiss contains much of the intrinsic fraud of misrepresenting facts to prevent the plaintiff from recovering that the defendants memorandum of law asserts would be recognized as actionable fraud in the State of Missouri.

Should the defendants succeed in deceiving this court to obtain a dismissal through the factual misrepresentation of what is facially written in the plaintiff's claim, the remedy is governed by *Chewning v. Ford Motor Company* and would result in an action for fraud against the perpetrators believed to be a resident corporation of Missouri and individual residents of Missouri in the Independence, Missouri's 16<sup>th</sup> Circuit court where this current petition was filed:

[51] The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Contrary to perjury by a witness or a party's failure to disclose requested materials, conduct which constitutes intrinsic fraud, where an attorney - an officer of the court - suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud.

[52] Moreover, we note that, while their analysis does not turn on the categorization of fraud as intrinsic or extrinsic, numerous jurisdictions hold an attorney's subornation of perjury and/or the intentional concealment of documents constitute fraud upon the court. *Kupferman v. Consol. Research & Mfg. Corp.*, 459 F.2d 1072 (2d Cir. 1972) (institution of action by attorney who knew that there was complete defense to action might be fraud upon the court); *Great Coastal Express, Inc., v. Int'l Brotherhood of Teamsters*, 675 F.2d 1349, 1357 (4th Cir. 1982) ("[I]nvolvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court."); *Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 986 (4th Cir. 1987) ("A verdict may be set aside for fraud on the court if an attorney and a witness have conspired to present perjured testimony."); *Rozier v. Ford Motor Co.*, 573 F.2d 1332 (5th Cir. 1978) (fabrication of evidence where attorney is implicated is fraud upon the court); *H.K. Porter Co. v. Goodyear Tire & Rubber*, 536 F.2d 1115, 1119 (6th Cir. 1976) ("Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."); *Dixon v. Comm'n of Internal Revenue*, 2003 WL 1216290 (9th Cir. 2003) (fraud on the court occurred where attorneys entered into secret settlement agreements with taxpayers in exchange for false testimony); *Synanon Found., Inc., v. Bernstein*, 503 A.2d 1254 (D.C. 1986) (attorney subornation of perjury and false statements to trial court constitute fraud upon the court); *Porcelli v. Joseph Schlitz Brewing Co.*, 78 F.R.D. 499 (E.D. Wis. 1978) (noting distinction between perjury involving officers of the court and witness or party); see 12 James Wm. Moore et al., *Moore's Federal Practice* ¶ 60-21[53][b] (3d ed. 2002).

[54] Attorney fraud calls into question the integrity of the judiciary and erodes public confidence in the fairness of our system of justice. Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs."

*Chewning v. Ford Motor Company*, 2003 SC 109 at ¶¶ 51-54 (SC, 2003)

#### **From the *MSC v Neoforma* Complaint:**

On or about 10/1/02 Medical Supply contacted Chris Walden of the Noland Road, Independence MO branch of US Bank for direction on escrow accounts and commercial banking services. Medical Supply

was referred to Becky Hainje a US BANCORP "Private Banker" and on or about 10/3/02 Becky Hainje contacted Samuel Lipari and told him she would arrange to put him in contact with the persons in different departments of US Bank that could provide Medical Supply the services Medical Supply requested and needed. She connected Medical Supply with Brian Kabbes in St. Louis who was responsible for US Bank commercial trust accounts in Missouri and Kansas. She also connected Medical Supply with Douglas Lewis, responsible for commercial loans in the Noland Road office.

Samuel Lipari described Medical Supply's need for escrow accounts to Brian Kabbes and emailed him an escrow contract that Medical Supply counsel had prepared for its candidates. Brian Kabbes asked questions about the candidates, the certification program and how many candidates had been selected so far. Samuel Lipari negotiated with Brian Kabbes to reduce the escrow fee per account since all escrow accounts would be identical, and US Bank had refused to have the funds in a single account. Brian Kabbes agreed to lower the fee for US Bank's escrow agent services from the normal of \$1,500 to \$600 per account and no hidden or additional transaction or disbursement fees.

After reviewing the escrow contract, on or about 10/5/02 Brian Kabbes communicated to Samuel Lipari that the language of paragraph 10 "Security Interests" should be changed so that a security interest for US Bank could be created in the \$5,000 portion of the escrow that became Medical Supply's property the moment a candidate submitted their certification funds into escrow. Medical Supply altered its escrow contract to conform to Brian Kabbes' suggestion and on or about 10/7/02 emailed the changes to Brian Kabbes. Brian Kabbes and US Bank were identified as the escrow agent in the escrow agreement and Brian Kabbes' address was included in the body of the agreement.

On or about 10/8/02 Samuel Lipari spoke again to Becky Hainje about Medical Supply's need for a business line of credit based on the Medical Supply portion of the escrow assets. Becky Hainje said she had talked to Brian Kabbes and he had told her there would be no problems with the escrow accounts, that they were a "slam dunk." She suggested Samuel Lipari call Doug Lewis and make an appointment to apply for the line of credit, which was based on the escrow account assets.

On or about 10/9/02 Brian Kabbes called to request an additional change in the escrow contract. He supplied a specified US Treasury fund investment language for the funds while the funds were in the custody of US Bank Trust Department. Medical Supply agreed to the additional change and modified the

investment instructions exactly as Brian Kabbes instructed. Medical Supply also ask if there were any other changes needed before Medical Supply sent the contracts out to its certification candidates. Brian Kabbes said there would be no other changes and asked why Medical Supply was sending the candidates the escrow contract. Medical Supply explained that the contracts were going out with the certification program agreement so candidates would have a chance to review the information before their November 1st deadline, which required their funds to be in the US Bank escrow accounts. Brian Kabbes acknowledged the explanation and agreed to look over the release document Medical Supply developed that candidates would execute following the weeklong evaluation seminar to be held the first week of December.

During this conversation, Brian Kabbes also requested Medical Supply's current corporate good standing documentation from the Missouri Secretary of State's Office. Medical Supply agreed to send him the reinstatement and tax clearance documents on Friday 10/11/02 and that Samuel Lipari was meeting with Doug Lewis on the afternoon of Thursday 10/10/02 to set up the credit facility using the escrow accounts as security. Samuel Lipari told Brian Kabbes he would have Doug Lewis send the requested information to Brian Kabbes on 10/11/02. Brian Kabbes made no statement that US Bank had yet to approve Medical Supply 's escrow accounts and sought no additional information.

On or about Thursday 10/10/02, Samuel Lipari delivered the Medical Supply business plan and associate program to Douglas Lewis, at the US Bank, Noland road office to apply for the agreed upon commercial line of credit based on the portion of the escrow accounts Medical Supply would retain.

The business plan and associate program booklets each had cover pages giving notice of restricted use and that Medical Supply protected the confidential business trade secret and intellectual property contained in them.

A letter of introduction also stated the contents were protected and restricted disclosure and possession of the materials. Two more folders contained the good standing documentation Brian Kabbes requested and the associate program contracts that were sent to the candidates.

Doug Lewis asked how many candidates Medical Supply had and Samuel Lipari reached into his brief case and held up the ten folders of applicants who had committed to sending in their funds by November 1st and five others who were in the final stages.

Samuel Lipari further explained that he planned to start a new certification group each quarter. Samuel Lipari was given a loan application and agreed to and did return the application the next day.

On or about Tuesday 10/15/02 Brian Kabbes called Samuel Lipari and informed him that US Bank had turned down the escrow accounts because of the USA PATRIOT Act. When asked to clarify, he said the know your customer requirements had changed and US Bank could not set up the escrow accounts for Medical Supply.

Samuel Lipari was shocked and stunned and handed away the phone, where Brian Kabbes repeated again The Patriot Act as the reason the accounts were denied.

Later that morning Samuel Lipari called Becky Hainje and asked if she could see what happened. Samuel Lipari explained that Medical Supply was counting on the escrow accounts and that the line of credit depended on them too. He said he could not believe the USA PATRIOT Act could be a reason that applied to Medical Supply. She said she would call and see what happened.

Becky Hainje called back and left a taped recording on the Medical Supply answering system and listed the reasons Brian Kabbes told her. She said the reasons were the lack of a "relationship with the Bank... that the principals involved with the business were people unknown to the bank, but the main reason is to know your customer "Patriot Act" that was enacted after 9/11, and which we could not really give all the correct answers on the source and flow of money.

On or about 10/15/02 Medical Supply found Andrew Cesere was the head of US Bancorp trust department on the US Bank web site and at 4 p.m. called his secretary Barb in Minneapolis. He was unavailable so Medical Supply asked her to leave instructions for him to call Samuel Lipari about Medical Supply's corporate escrow account rejection at 9 a.m. the following morning.

Barb asked for more details concerning the problem. She said Mr. Cesere had a morning meeting but she would get the message to him. At 4:30 p.m. she called back and asked for additional information and the names of the people Medical Supply had dealt with so that Mr. Cesere could inquire about the problem.

At 9 a.m. the following morning on or about 10/16/02 Ed Higgins called, leaving a tape-recorded message on Medical Supply's answering system identifying him as the executive vice president of Midwest trusts for US Bank. Samuel Lipari, believing that the USA Patriot Act had probably been used to reject the escrow accounts because of his family sir name which is also the name of a small group of Islands in the

Mediterranean Sea and which ends in “ari” like many Moslem sir names of people of Arabic descent, activated a tape recorder with a built in microphone and called Mr. Higgins back on the speaker phone. Each subsequent call to US Bank in which Samuel Lipari participated was also recorded by him to document what he suspected was discrimination based on his national origin or ethnic descent.

Ed Higgins listened to Samuel Lipari after stating he was an attorney and how long he had been working in trust banking, agreed with him that he saw no reason why the USA Patriot Act would apply to Medical Supply.

Samuel Lipari explained that Medical Supply needed additional US Bank services including credit facilities, receivables financing and clearing and settlement services for approximately 90 million worth of transactions in the first year of operations. He said he would check into the matter and call Samuel Lipari back later that day.

Instead of Ed Higgins, Brian Kabbes called back with Lars Anderson who he identified as head of corporate trust new business development person and Susan Paine who he said he reported to, both on the line with him. Medical Supply explained that at the time of his previous call, it was not realized that the escrow account contracts that US Bank had approved had already been sent out to the candidates in reliance on US Bank’s agreement to host the escrow accounts.

Lars Anderson expressed some irritation that Medical Supply had contacted the head of the trust unit about the rejection of escrow accounts. Lars Anderson said the bank had never been on board and it was not a done deal. Brian Kabbes denied that there had been an agreement; he said he had twice told Samuel Lipari. Lars Anderson said that there had never been a signed off agreement to provide the service and that there had never been any bid for it. Medical Supply contradicted that and said the price for the service had been quoted by Brian Kabbes and after negotiating, a specific amount had been agreed upon.

Samuel Lipari also told them Brian Kabbes provided and requested changes to the escrow and that Brian Kabbes had told Becky Hainje it was a “slam dunk.”

During the call Medical Supply attempted several times to work out any misunderstandings and set up at least the 10 accounts Medical Supply had relied on US Bank for and that US Bank had known about and that Medical Supply was now in danger of being irreparably harmed.

Medical Supply stated that the Patriot Act did not apply and that Medical Supply was in actuality an established US Bank customer and that Medical Supply had been in a trust relationship with US Bank and the bank even had its business plan and information about its proprietary business model.

Brian Kabbes said that the trust department was a “stand-alone unit” and had its own criteria for accepting customers. US Bank refused to reverse its decision.

Medical Supply pointed out that it had not received a true reason for denial of the accounts and that the reason given was a pretext at best.

Viewing US Bank’s actions, Medical Supply stated they could only be explained by a conflict of interest due to US Bancorp’s existing healthcare investments and involvement. Medical Supply felt extremely disturbed by the apparent out come of this situation, there was not enough time to establish a new banking relationship with another nationally recognized Bank and Medical Supply would loose substantial momentum.

Medical Supply had spent several months building up to roll out it’s supply chain empowerment program and felt to change a trust relationship in the middle will be devastating to it’s entry to market. Medical Supply researched over 300 resumes only to find 30 that appeared to be qualified.

On or about 10/17/02 Samuel Lipari telephoned Douglas Lewis and told him what had happened. Doug said he had sent Brian Kabbes the good standing documentation but not the business plan and associate program. Samuel Lipari instructed him not to send the business plan and associate program materials to the corporate trust office of US Bank in St. Louis because of previous losses of intellectual property from unauthorized business plan dissemination.

Samuel Lipari told Douglas Lewis that Medical Supply would be litigating over the escrow decision and planned to renew its application for a line of credit once it had the situation straightened out.

Samuel Lipari suggested he might find another bank but Douglas Lewis said that would make the line of credit difficult. Samuel Lipari further instructed Douglas Lewis to hold on to the materials and keep anyone else from having access to them. Douglas Lewis agreed and stated he would keep the business plan materials safe.

On or about 10/18/02 Medical Supply drafted a letter and sent it to Jerry A. Grundhoffer, the President and Chief Executive Officer of US Bancorp NA with a copy being sent to Andrew Cesere, explaining the

staggering damages US Bancorp would be liable for in imminent litigation due to the refusal to provide escrow accounts to Medical Supply. Medical Supply suggested an alternative of fact finding depositions to take place in St. Louis, MO before the end of the day Tuesday 10/22/02, believing US Bank to be misinformed about the USA Patriot Act and any reason for denying the escrow accounts.

US Bancorp Trust Department corporate counsel, Kristen Strong replied Friday 10/18/02 via fax and priority delivery with a letter denying US Bancorp NA was in contract with Medical Supply and that if any law suit is filed to address service for the trust department to her at her office.

Medical Supply called the trust department counsel Monday 10/21/02 to ask for service addresses of the other named entities and employees. Kristen Strong said the same address would be good for all and then proceeded to ask what the causes of action were. Medical Supply explained that it was chiefly an antitrust action based on the Sherman, Clayton and Hobbs Act and that causes of action under the USA Patriot Act were also a basis for the suit.

Kristen Strong was surprised Medical Supply was told the USA Patriot Act had been given as the reason for the denial of escrow account service but reiterated that there was no contract in her view and she saw no basis for the other causes of action. Medical Supply stated that it would fax the complaint to her at the time the action was filed at the end of business Thursday 10/24/02, but they were still waiting for Mr.

Gunderson to select the alternative of mutual fact finding to promote a resolution of the matter without litigation.

Kristen Strong stated that the depositions would not lead to any meaningful explanation, that Medical Supply had her letter explaining US Bank's reason for denying the escrow accounts and that the bank reserved the right to choose whom it served.

Medical Supply reminded her that US Bancorp had extensive investments in healthcare and that choosing not to provide a service to a competitor is actionable under antitrust law.

Kristen Strong warned Medical Supply Not To Contact Anyone At US Bank And Said If Medical Supply filed an action against US Bancorp NA, she would send a letter to the judge in advance of her answer to our complaint saying we had *ex parte* communications.

Medical Supply stated that it had not had any communications with US Bank employees since receiving her reply on Friday 10/18/02. However, Medical Supply was an account holder at US Bank and would continue to have communications with US Bank regarding its other bank business.

Medical Supply reminded her that US Bancorp had extensive investments in healthcare distributors and that choosing not to provide a service to a competitor is actionable under antitrust law.

Medical Supply contacted an attorney, familiar with the healthcare supply chain research and development done by Samuel Lipari at the law firm of Shook Hardy and Bacon and asked if his firm could act as escrow agent for accounts to be set up in US Bank. He said the bank is better prepared to provide escrow services, fearing the liabilities and risks for an escrow agent where the USA PATRIOT Act had been invoked and declined to act as escrow agent.

On Thursday 10/24/02 Medical Supply filed for urgent injunctive relief against US BANCORP NA, its subsidiaries and named employees. Medical Supply counsel contacted US Bank counsel Kristin Strong to clarify the clerk of the court's questioning of service and to attempt to schedule a hearing. Ms. Strong said she would call the following morning Friday 10/25/02 to answer the question about service. She did not call and took the day off. Medical Supply counsel called her on Monday morning 10/28/02 at which time she said the case had been transferred to outside counsel and gave the phone number to Medical Supply.

#### **Interrogatory No. 12 (Prima Facie Tort)**

Additional persons with knowledge are Steven Ruse, Andrew DeMarea, Sherri Price (contact unknown), Stanton Hazlett, The KS Disciplinary investigator working for Hazlett that met for dinner with Magistrate O'Hara, The KS Attorney Gene E. Schorer believed to have been working for Hazlett, and Magistrate O'Hara.

On or about 11/7/02 Samuel Lipari received a complimentary D&B report dated 10/31/02 on Medical Supply. The report indicated Medical Supply started in 2000 and has a clear credit history and a strong financial condition.

On November 18, 2002, Medical Supply obtained a TRO hearing on its request for preliminary injunctive relief. Medical Supply sought urgent preliminary injunctive relief from trade secret misappropriation and

urgent preliminary injunctive relief from USA PATRIOT Act reporting.

Medical Supply had second preliminary injunction hearing at 12:00 p.m. on December 12, 2002. Medical Supply again sought urgent preliminary injunctive relief from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting, but was denied.

On December 17, 2002 Medical Supply filed a notice of interlocutory appeal to The Tenth Circuit Court of Appeals.

On June 16, 2003, the Kansas District Court dismissed Medical Supply's action for injunctive and declaratory relief.

After losing a motion for new trial, Medical Supply filed a timely notice for appeal on November 21, 2003.

On January 7<sup>th</sup>, 2004, the Tenth Circuit dismissed the interlocutory appeal as moot due to the superceding appeal of the action's dismissal.

**US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer Realize Because Of The Prospective Injunctive Relief Action Their Antitrust Liability To Medical Supply And The Requirement At Law That They Must Divest Piper Jaffray At A \$750 Million Dollar Loss**

Jerry Grundhoffer, the CEO of US Bancorp NA realized that his acquisition of Piper Jaffray in a scheme to exploit US Bank essential facilities as the eight largest national bank in America and use its deposits as a guarantor of capital in underwriting initial public offerings (IPO's) of healthcare technology and supply chain companies and to support those IPO's with Piper Jaffray's essential facility of providing investor research had made US Bank and US Bancorp NA liable under antitrust law for its injury to Medical Supply.

Jerry Grundhoffer attempted to sell Piper Jaffray first to Royal Bank of Canada and then to A.G. Edwards & Sons, Inc., seeking a purchase price \$100 million dollars less than US Bancorp had acquired Piper Jaffray for.

In December of 2002 Samuel Lipari, CEO of Medical Supply communicated with Gordon M. Nixon and Irving Weiser of the Royal Bank of Canada (RBC) explaining Medical Supply's action against Piper Jaffray and offering to work with RBC if they decided to purchase Piper Jaffray in the hope that RBC would "prevent similar conflicts of interest from ever occurring and to ensure healthcare company securities are not marketed on the basis of illicit anticompetitive contracting advantages."

In December 2002 Samuel Lipari, CEO of Medical Supply contacted Robert L. Bagby and Douglas L. Kelly of A.G. Edwards & Sons, Inc. about the action against Piper Jaffray offering to work to resolve any claims:

“We believe we will prevail in our antitrust and contract related claims. The portion of liability for these staggering damages that will be apportioned to US Bancorp Piper Jaffray INC causes us great concern for your company should it acquire Piper Jaffray. A.G. Edwards has responsible corporate governance standards in place and has long served its customers without reproach. I will be happy to work with you and your counsel to resolve Piper Jaffray’s involvement in these anticompetitive acts.”

Jerry Grundhoffer sought and obtained an agreement with Piper Jaffray’s C level officers subrogating US Bancorp NA and US Bank’s future antitrust judgment liability to Medical Supply from Jerry Grundhoffer to Piper Jaffray.

Having no other alternative and realizing that liability to Medical Supply in antitrust continued to accumulate as long as the two companies were commonly owned, US Bancorp announced on February 19<sup>th</sup>, 2003 that Piper Jaffray was being spun off or separated from US Bancorp NA.

On December 31<sup>st</sup> 2003, US Bancorp announced the completion of its spin off of Piper Jaffray, trading on the NYSE as an independent public offering January 2, 2004.

**Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma’s Utilization of Ongoing Sham Petitioning By Shughart, Thomson & Kilroy, Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer To Deprive Medical Supply of Counsel**

On November 20, 2003, The defendants through their agent Shughart Thomson & Kilroy, P.C.’s former managing partner and Shughart Thomson & Kilroy shareholder acting as magistrate in Kansas District Court action *Bolden v. City of Topeka, et al*, Case No. 02-CV-2635, where the African American plaintiff James Bolden was being represented by Medical Supply’s counsel repeatedly told Bolden that he should sue his attorney for malpractice. The magistrate also stated Bolden would be better off representing himself. Bolden testified he was thankful to have his counsel, three previous ones had abandoned him after being intimidated and retaliated against by the City. Bolden’s previous counsel still has not been located. Affidavits were furnished that many witnesses and process servers had been retaliated against, threatened with criminal prosecution if they testified in federal court and harassed. The magistrate also denied Bolden discovery in the action.

The transcript of the hearing which was also taped reveals that the magistrate was obsessed with legal malpractice insurance as a result of his firm’s mishandling of Medical Supply’s action against the US

Bancorp defendants and Unknown Healthcare Supplier, amply documented in the record, and the aborted disclosures of the firm's malpractice liability insurance as the party in interest and guarantor of US Bancorp's certain liability.

During the *Bolden v. City of Topeka, et al* pretrial conference the former Shughart Thomson & Kilroy managing partner and shareholder acting as magistrate expressed his disturbance over "stealth lawsuits" where parties don't even know they are subject to them. While wholly inapplicable to Bolden's case where the City was liable for the officials regardless of whether they remained in the case, the subject of the deliberate pretext used to attack Medical Supply's counsel for his representation of Bolden, the magistrate is clearly troubled over the failure of his firm to consider its responsibilities to the identified coconspirators in *Medical Supply v. US Bancorp, et al*.

The attack on Medical Supply's counsel was overtly pretextual. The civil rights liability of the city for the conduct of its officers in their official capacity is based on law the magistrate well knew and in an unrelated pretrial order conference the following day accepted the voluntary stipulation of parties that all officials be voluntarily dismissed. The magistrate also stated that there was unlikely any difference in damages in a footnote to his report and recommendation.

The magistrate reiterated his criticism of Medical Supply's counsel in the *Bolden v. City of Topeka, et al* pretrial order conference report and recommendation, stating Bolden should consider representing himself if Medical Supply's counsel is the only attorney he can get. On December 3, 2003, the magistrate's report and recommendation was submitted as an attachment and the basis for an ethics complaint filed by the assistant city attorney Sherri Price against Medical Supply's counsel for his representation of Bolden. The Kansas Office of the Disciplinary Administrator investigated the complaint by having dinner with the magistrate. The magistrate used to be work for the office prior to starting at the defendants' agent Shughart Thomson & Kilroy and continued to serve on various Kansas state ethics committees while a managing partner for at Shughart Thomson & Kilroy. Bolden was never contacted during the investigation and during the prosecution appeared only as a witness for Medical Supply's counsel.

The defendants US Bancorp, and US Bank along with the nondefendants Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the nondefendant coconspirators Jeffrey R. Immelt, GE, GHX, GE

Healthcare, GE Capital and GE Transportation who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation. The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment.

On January 29, 2004, March 4, 2004, April 2, 2004 US Bancorp's counsel, Nicholas A.J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10<sup>th</sup> C.C.A. 03-3342) with the GE defense. The GE defendants included the action against the US Bancorp defendants and Unknown Healthcare Provider as a related appellate case in (10<sup>th</sup> C.C.A. 04-3075) and used the US Bancorp order as a basis for a cross appeal (10<sup>th</sup> C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply. The coconspirators of US Bank and US Bancorp including UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US Bancorp and consulting with representatives for US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff. The defendants decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The defendants also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, all originating from the cartel's and defendant's agents Shughart Thomson and Kilroy, P.C.'s past and current share holders.

The defendants' agent Shughart Thomson & Kilroy, P.C.'s counsel, Andrew DeMarea failed to file a reply brief in the interlocutory appeal for the US Bancorp appellees. The Tenth Circuit court clerk called him two days later to remind him and urged him to file for an extension one day beyond the date the brief was due and seven days beyond the deadline for a motion for extension of time under 10th Cir. R. 27.4(F).

The defendants' agent Andrew DeMarea also refused to turn in a parties case management conference report on the form required by local rule in the Kansas District Court. He repeatedly assured the magistrate during the first case management conference that the Medical Supply case would be dismissed.

Mark Olthoff, an attorney for the defendants' agent Shughart Thomson & Kilroy in their Kansas City, MO office appeared to write all pleadings and briefs for the defendants until the second appeal where he appears to have been replaced by Susan C. Hascall of the Kansas City, MO office who was a Tenth Circuit Court of Appeals law clerk through 2000.

Mark Olthoff's trial pleadings repeatedly misstated and misrepresented Medical Supply's Amended Complaint and pleadings to the court, even after it had been repeatedly drawn to the court's attention that Mr. Olthoff was exploiting the court's reliance on the experience of the defendants' agent Shughart Thomson & Kilroy, P.C. and was neglecting to read or consider Medical Supply's pleadings. In its order, the court even admonished Medical Supply's for failing to research law and facts that the record evidences had been researched. The negligence was entirely that of Mr. Olthoff and the court's or a result of the court's misplaced reliance on Mr. Olthoff.

The Medical Supply action against US Bancorp was dismissed but not on arguments or authorities presented by the defendants' agent Shughart Thomson & Kilroy's dismissal memorandum. The first findings of law and fact made by the court in the case were *sua sponte* and both were clearly erroneous. The court did not respond to Medical Supply's arguments for reconsideration or correct its factual errors. It is believed that the Shughart Thomson & Kilroy former managing partner obtained the magistrate assignment to Medical Supply's case against General Electric because of his relationship to Shughart Thomson & Kilroy and it provided an opportunity to address the same fact pattern as the earlier case because GE breached its contract with Medical Supply once the electronic marketplace GHX created by GE and its hospital supplier competitors discovered Medical Supply was attempting again to enter the market for hospital supplies.

On January 14th, 2005, Andrew DeMarea was directed to file an ethics complaint against Medical Supply. Like the "complaint" filed by Sherri Price, no allegations of misconduct appear in DeMarea's complaint, it merely incorporates by reference attached Medical Supply filings in the District Court and the Tenth Circuit and the appellate panel's sanction of Medical Supply's counsel for a "frivolous appeal." The

“complaint” also contained Medical Supply’s motion for en banc review of the sanctions. The sanction order itself admitted the trial court and the hearing panels were mistaken in stating there was no private right of action contained in the USA PATRIOT Act.

The defendants through their agent Shughart Thomson & Kilroy, P.C.’s former managing partner using his position as magistrate assigned to the Medical Supply action against General Electric to deny Medical Supply discovery. A decision he also made in the Bolden case. On January 20, 2005 the magistrate testified under oath in the disciplinary prosecution of Medical Supply’s counsel that he had only denied discovery in a few cases. He stated he was unaware of any other case he was assigned where the respondent was an attorney. He visibly winced when he was then questioned if he was a magistrate in Medical Supply v. General Electric et al. where the respondent was the sole counsel for the plaintiff.

On January 19<sup>th</sup>, 2005, the state disciplinary tribunal heard arguments that the magistrate was the complaining witness in fact for the complaint made by the assistant city attorney against Medical Supply’s counsel. Sherri Price made no independent allegations or observations of misconduct against the respondent and merely incorporated by reference Magistrate O’Hara’s report and recommendation from Bolden’s pretrial conference. The disciplinary tribunal ordered the magistrate to drive to Topeka and testify under oath.

The defendants through their agent Shughart Thomson & Kilroy, P.C.’s former managing partner acting as magistrate added to his attacks against Medical Supply’s counsel with further statements impugning the respondent’s competence. . The magistrate testified that Bolden’s counsel was the worst attorney he had seen in 20 years. The magistrate alleged that Medical Supply’s counsel did not have the skill or knowledge of the law a first year law student would possess.

The defendants through their agent Shughart Thomson & Kilroy, P.C.’s former managing partner acting as magistrate made a point of addressing facts that weakened the Kansas Disciplinary Administrator’s case from the previous two days and made these assertions unsolicited from the questioning of the Disciplinary Administrator and demonstrated a pre appearance coaching or consultation with the Disciplinary Administrator, especially on the point about Medical Supply’s competence being less than that of a first year law student. The magistrate could not have known that Medical Supply’s counsel had testified the

previous day that many states permit law students to represent clients in civil rights actions because of the shortage of counsel willing to undertake this difficult and unucrative work.

The defendants through their agent Shughart Thomson & Kilroy, P.C.'s former managing partner acting as magistrate impugned the professional ability of Medical Supply's counsel in an order where he was neither a party or attorney, The magistrate stated unequivocally that Medical Supply's counsel was incompetent. During testimony under oath on January 20<sup>th</sup>, 2005, the magistrate stated he could not recall ever stating in an order where the respondent was not an attorney that the respondent was incompetent.

Because of these illegal anticompetitive agreements with Novation and Neoforma, Inc., Piper Jaffray and then US Bancorp refused to deal with Medical Supply Chain, Inc. US Bancorp broke a contract with Medical Supply Chain, Inc. to provide escrow accounts needed to capitalize Medical Supply's entry into the hospital supply marketplace, using the pretext of the USA PATRIOT Act. US Bancorp and Piper Jaffray simultaneously stole Medical Supply's intellectual property, which has since been openly used by Novation and Neoforma. US Bancorp and Piper Jaffray have continued to extort property from Medical Supply Chain on behalf of the hospital supply cartel by obstructing entry to the market for hospital supplies through the threat of malicious USA PATRIOT Act reports.

Medical Supply attempted to obtain preliminary injunctive relief against US Bancorp, The Piper Jaffray Companies and an Unknown Healthcare Supplier to prevent them from using the USA PATRIOT Act as a sham petition designed to prevent Medical Supply from entering the market and to stop the theft of its intellectual property. To date, Medical Supply has not been successful.

The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff competed and compete directly with Medical Supply in the market for capitalization of healthcare technology and supply chain management companies because Medical Supply was forced by the defendants conspiracies and combinations to self capitalize its entry into market with unique trust accounts from it had solicited from its sales representative candidates.

The defendants US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have and have had significant interests in the market for hospital supplies and hospital supplies sold in e-commerce where US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have concentrated 70% of their investment and

have marketed IPO shares based on exclusive dealing contracts obtained for their client companies with Novation, LLC. , Neoforma, Inc., Volunteer Hospital Association and University Healthsystem Consortium.

The Defendants repeatedly used the USA Patriot Act to deny services of US Bank and US Bancorp to Medical Supply, causing the loss of Medical Supply property. The Defendants, despite their regulated status as financial institutions and corporate officers of financial institutions responsible for providing a professional service; denied Medical Supply, a known domestic corporation in good standing with its Secretary of State and State Department of Revenue an escrow account service on the basis of increased reporting requirements for new accounts under the USA PATRIOT Act even though The US Treasury Department had previously announced it was delaying the date account opening requirements become issued and effective and Us Bancorp was under no reporting requirements for Medical Supply's escrow accounts.

The Defendants continue to endanger the plaintiff Medical Supply and its associates with wrongful denial of services and facilities of US Bancorp where Medical Supply has its accounts or at other national and state banks where Medical Supply may be denied services based on erroneous or bad faith reporting by the Defendants.

The Defendants continue to endanger the plaintiff Medical Supply, its associates and customers with illegal conduct that prevents them from or threatens to prevent them providing a market solution to this governmental healthcare policy issue.

The US Senate Judiciary Committee's Antitrust Subcommittee has held three consecutive hearings on the anticompetitive practices in the national market for hospital supplies. The illegal actions of the defendants have prevented the plaintiff founder of Medical Supply from having the resources to personally appear and testify.

The Defendants through their illegal obstruction of Medical Supply's entry into the markets for hospital supplies and hospital supplies in e-commerce have attempted to influence the national policy debate on group purchasing organization regulation by denying legislators statistics and data from a functioning independent electronic marketplace.

The Defendants knew their law firm agent Shughart Thomson & Kilroy has acted outside of litigation in defense of the Defendants and repeatedly sought to deprive Medical Supply of counsel under color of state law by causing Medical Supply's counsel to have multiple ethics complaints filed and prosecuted for the sole purpose of preventing Medical Supply from having effective representation.

The Defendants knew their law firm agent Shughart Thomson & Kilroy was succeeding in extra legal influencing of Medical Supply's case against the US Bancorp defendants and the action against GE and its subsidiaries and overtly ratified said conduct for the purpose of monopolizing the markets in the sale of hospital supplies and hospital supplies in e-commerce and the market in capitalizing healthcare technology and supply chain management companies.

From the *Lipari v. US Bancorp et al* complaint:

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23. Medical Supply then brought its now ripe damages claims against US BANK and US BANCORP along with its existing pendant state law contract and trade secret misappropriation claims in the Western District of Missouri.

24. The case was transferred to the District of Kansas at Kansas City, Kansas to Kansas District Court Judge Kathryn H. Vratil who made no rulings delaying the opportunity to obtain discovery on the defendants' participation in the wrongful disbarment of Medical Supply's counsel for almost a year.

25. Kansas District Court Judge Kathryn H. Vratil then participated in an ex parte discussion on the day of the disbarment oral argument with personnel and justices of the Kansas Supreme Court, disparaging Medical Supply's counsel without his knowledge or opportunity to question Kansas District Court Judge Kathryn H. Vratil's testimony in

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conduct designed to cause Medical Supply's counsel to be disbarred without due process.

26. Kansas District Court Judge Kathryn H. Vratil then removed herself from the case on October 20, 2005 minutes before the Kansas Supreme Court justices heard Medical Supply's counsel's oral argument. A transcript of the hearing which was resultantly delayed will give light to these unusual events.

27. The petitioner's case was then transferred to Kansas District Court Judge Carlos Murguia where he took no action for many months until immediately after Medical Supply's counsel was reciprocally disbarred by the Kansas District Court without disclosing to Medical Supply's counsel that Kansas District Court Judge Kathryn H. Vratil had participated in ex parte testimony over Medical Supply's counsel's "incompetence".

28. The Kansas District Court refused to postpone its

decision on reciprocally disbaring Medical Supply's counsel until the Tenth Circuit ruled on the appeal of *Bolden v. City of Topeka* where Medical Supply's counsel representing James Bolden challenged Judge Kathryn H. Vratil's findings of law in that case and where Magistrate Judge James O'Hara, a managing partner in the defendants' law firm Shugart Thomson & Kilroy authored a case

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management recommendation condemning Medical Supply's counsel for properly relying on controlling case law on alternative state law service of process.

29. The Kansas District court also interfered and obstructed providing records to the Tenth Circuit court for the appeal in *Bolden v. City of Topeka* during and after the state proceedings to disbar Medical Supply's attorney causing the Tenth Circuit to have to postpone the briefing schedule of James Bolden's appeal.

30. The Kansas District Court Judge Kathryn H. Vratil was ultimately overruled on two issues appealed by the petitioner and James Bolden's now disbarred counsel and the decision *Bolden v. City of Topeka*, 441 F.3d 1129. (10thCir.2006) has been favorably cited by the Sixth Circuit.

31. No further court action occurred in the Medical Supply action until the petitioner's counsel had been disbarred, then Kansas District Court Judge Carlos Murguia began in earnest making rulings with the visible purpose of dismissing the action for the lack of counsel and completing the removal of representation participated in by the Kansas District court and to further its adversarial interest in the petitioner's proceeding.

32. The Kansas District Court Judge Carlos Murguia dismissed the federal claims in their entirety for failure to state a claim despite the fact that the complaint was identical in elements of pleading for its claims to the complaint filed in *Craftsman Limousine, Inc. vs. Ford Motor Company and American Custom Coachworks, et al*, 8th Cir. 03-1441 and 03-1554 and Judge Murguia expressly declined to exert jurisdiction over the state law based claims.

33. The Kansas District court retained jurisdiction over the federal action to sanction Medical Supply's former counsel and SAMUEL K. LIPARI for among other reasons, witnessing his counsel's disbarment but then because of a timely motion for reconsideration ruled Medical Supply Chain, Inc. would be sanctioned.

Said activities were intended by Defendants and performed by Defendants.

Said activities were intended by Defendants to cause injury to Plaintiff.

Said activities did directly and proximately cause injury to Plaintiff.

Said activities were and are unjustified.

Defendants' actions were willful, wanton, malicious and oppressive.

**Interrogatory No. 13 (Persons Business Plan Disclosed To)**

I will obtain and produce to you the contact information within the week.

**Interrogatory No. 14**

I furnished this to you in my initial disclosure and for which you are now corruptly seeking for me to be sanctioned. Documents 2125 thru 2726 of Initial Trial Exhibits Vol. I provided on a disc to you are the names addresses of all the candidates.

**Interrogatory No. 15**

I have no more information to supplement my answer to interrogatory 15.

**Interrogatory No. 18**

I have no more information to supplement my answer to interrogatory 18 except “Clark Fisher” is Clerk Fisher former chief clerk of the Tenth Circuit Court of Appeals believed to have been fired from that position for his participation with the defendants and their agent Shughart, Thomson & Kilroy P.C. in extrinsic fraud to fraudulently procure the appeals courts outcomes used by the defendants to help cause the dismissal in trial court of *MSC v. Neofoma et al.*

**Interrogatory No. 19**

I have no more information to supplement my answer to interrogatory 19 because the information is in possession of the defendants and is the electronic information the defendants have been under notice since June 2003 that they are required to preserve.

**Interrogatory No. 20, 21**

I have no more information to supplement my answer to interrogatory 20 and 21 because the information is in possession of the defendants and is requested in discovery for the specific dates and specific identities of the persons communicating as agents for the defendants and will be the subject of questioning US Bancorp in the deposition.

**Interrogatory No. 22**

I have no more information to supplement my answer to interrogatory 22.

**CONCLUSION**

The above supplemental answers are the complete answers to the issues you raised except for the contact information for the persons I shared my business plan with.

Respectfully Submitted,

S/ Samuel K. Lipari

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was served via email, on this 6th day of May, 2008 to:

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S/ Samuel K. Lipari

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