

FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

No. WD 70832

[Please type or neatly print the information requested. This form must be filed with the Notice of Appeal (form 8-A) with the Circuit Clerk.]

Samuel K. Lipari
Plaintiff

Pro Se
Attorney's Name
3520 NE Akin Blvd., #918
Street Address

Lee's Summit, MO 64064
City Zip Code

vs.

NOVATION LLC

NEOFORMA INC

GHX LLC

ZOLLARS , ROBERT J

VOLUNTEER HOSPITAL ASSOCIATION

VHA MID AMERICA LLC

NONOMAQUE , CURT

SPINDLER , THOMAS

BEZANSON , ROBERT H

DUNCAN , GARY

OLIVERIUS , MAYNARD

VAN TREASE , SANDRA

ROBB , CHARLES V

TERRY , MICHAEL

UNIVERSITY HEALTHSYSTEM CONSORTIUM

BAKER , ROBERT J

COX HEALTH CARE SERVICES OF THE OZARKS INC

SAINT LUKES HEALTH SYSTEM INC

STORMONT VAIL HEALTHCARE INC

POWER, JOHN K.

Attorney's Name

HUSCH BLACKWELL SANDERS LLP

4801 MAIN STREET SUITE 1000

Street Address

KANSAS CITY, MO 64112

City

Zip Code

SHUGART THOMSON & KILROY PC

HEIDRICK , JAY E

Attorney's Name

Polsinelli Shughart PC

Twelve Wyandotte Plaza

120 W. 12th Street

Street Address

Kansas City, MO 64105

City

Zip Code

THE PIPER JAFFRAY COMPANIES

DUFF , ANDREW S

HEIDRICK , JAY E

Attorney's Name

LUDWIG LAW FIRM

2600 GRAND AVENUE, STE 550

Street Address

KANSAS CITY, MO 64108

City

Zip Code

HUSCH BLACKWELL SANDERS LLP

THOMPSON , MICHAEL J.

Attorney's Name

HUSCH BLACKWELL SANDERS LLP

4801 MAIN STREET SUITE 1000

Street Address

KANSAS CITY, MO 64112

City

Zip Code

LATHROP AND GAGE LLP

Defendants

DANIEL , PETER FLINT

Attorney's Name

LATHROP AND GAGE LLP

2345 GRAND BOULEVARD
Street Address
KANSAS CITY, MO 64108
City Zip Code

Date Notice filed in Circuit Court March 30th 2009

The Record on Appeal will consist of a:

 X Legal File Only or _____ Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16)

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action)

This is an antitrust action resulting from the defendants' Novation LLC cartel hospital skimming scheme and actions to keep the plaintiff a sole proprietor hospital supply distributor out of the Missouri market for medical supplies purchased by hospitals.

The defendants' Novation LLC cartel extracts fees from hospitals and kickbacks from each manufacturer whose products are purchased at Missouri hospitals under long term anticompetitive contracts that allocate market share. The defendants' Novation LLC cartel adds 20to 45% to the costs paid by Missouri hospitals and control the purchasing in over 70% of the state's hospitals. The defendants' Novation LLC cartel however misrepresents in annual reports to its Missouri member hospitals that Novation saves money in the form of rebates.

During the period addressed by this litigation the Missouri hospitals did not report their rebates in their Medicare reimbursement claims through the corruption of the Medicare administrator Blue Cross Blue Shield of Kansas ("BCBSK"). But, because of this misconduct, BCBSK lost the bid to renew the Medicare administration contract. The Missouri hospitals that were controlling members of the Novation LLC cartel had to replace the corrupt preferential treatment in Medicare claims reimbursement for hospital supplies and attempted to further the Novation LLC monopoly through an unlawful state scheme to administer Medicaid funds and purchase hospital supplies called "Insure-Missouri".

The defendants have interfered with the plaintiff's contracts and business relationships, including repeatedly depriving him of legal counsel for the purpose of furthering the Novation LLC cartel's monopoly of Missouri hospital supplies.

Citizens, employers and the State of Missouri have been injured by the defendants' Novation LLC cartel's conduct to artificially inflate hospital supply costs. The injuries have included the loss of healthcare insurance, a resulting loss of life from decreased medical care, and loss of life from shortages of supplies at Missouri hospitals like Truman Medical Center that were not controlling members of the Novation LLC cartel. The state has lost manufacturing jobs and its auto plants have been shut down because the artificial inflation of hospital supply costs has made Missouri healthcare an uncompetitive input resulting in foreign manufacturers gaining market share previously controlled by Missouri businesses. The State of Missouri has been injured from the overcharging by the defendants' Novation LLC cartel , the artificial inflation's impediment to Missouri's duty of providing healthcare to socially and economically disadvantaged citizens; and the loss of tax revenue from the jobs killed by uncompetitive employee healthcare costs caused by the defendants' Novation LLC cartel' hospital skimming.

ISSUE(S):

(Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)

I. Whether the court could properly grant the defendants' motions to dismiss on a new legal theory regarding the application of claim and issue preclusion from non final judgments in federal court inconsistent with controlling State of Missouri and Federal precedent.

II. Whether the court could properly grant the defendants' motions to dismiss on a new legal theory expanding *Noerr- Pennington* doctrine from *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961) to immunize unlawful acts to influence government for the purpose of monopolization.

III. Whether the trial court abused its discretion in granting defendant Lathrop & Gage LLP's Request for Judgment before the pleadings were closed and after the time limit for a Rule 55.27 (6) Motion to Dismiss

IV. Whether the trial court abused its discretion in adopting the defendants' dismissal and judgment motions misrepresenting material facts on the face of the petition

V. Whether the trial court abused its discretion in denying the proposed amended petitions on the basis of the plaintiff not complying with an order issued during the appeal's divestment of trial court jurisdiction.

VI. Whether the trial court abused its discretion in denying emails and letters expressly permitted under Missouri Supreme Court Rule 4-4.2: Communication With Person Represented By Counsel.

VII. Whether the order of costs against the plaintiff was proper when he was the prevailing party in this action as an acting private attorney general under the catalyst test described in *Ellis v. University of Kansas MedicalCenter* 10thCir. Case No. 96-3343a

[Two (2) typewritten pages maximum]

(Added June 25, 1987, effective Dec. 1, 1987. Amended effective June 23, 1988)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this ~~30th~~ day of ~~March~~ 2009, via email to:

8 April

John K. Power, Husch Blackwell Sanders LLP, 1200 Main Street, Suite 2300 Kansas City, MO 64105
Attorney for NOVATION LLC, VHA INC., UNIVERSITY HEALTHSYSTEM CONSORTIUM, VHA
MID-AMERICA LLC, THOMAS SPINDLER, ROBERT BEZANSON, GARY DUNCAN, MARYNARD
OLIVERIUS, SANDRA VAN TREASE, CHARLES ROBB, MICHAEL TERRY, COX HEALTH CARE
SERVICES OF THE OZARKS INC., ST LUKE'S HEALTH SYSTEM INC., STORMONT-VAIL
HEALTHCARE INC., ROBERT BAKER, CURT NONOMAQUE, GHX LLC, NEOFORMA INC.

Michael J. Thompson, 4801 Main St, Ste 1000, Kansas City, MO 64112 Attorney for HUSCH
BLACKWELL SANDERS LLC

William E. Quirk, Polsinelli, Shughart / Shughart Thomson & Kilroy, P.C. 120 W 12TH ST, Ste 1600,
Kansas City, MO 64105 Attorney for SHUGHART, THOMSON & KILROY

Mark A. Olthoff, Polsinelli, Shughart / Shughart Thomson & Kilroy, P.C. 120 W 12TH Street, Ste 1700,
Kansas City, MO 64105 Attorney for PIPER JAFFRAY COMPANIES and ANDREW DUFF

Jay E. Heidrick, Polsinelli, Shughart / Shughart Thomson & Kilroy, P.C. 32 Corporate Woods, Suite 1100,
9225 Indian Creek Parkway Overland Park, Kansas 66210 Attorney for JERRY GRUNDHOFER,
RICHARD DAVIS, ANDREW CECERE,

William G. Beck, Peter F. Daniel, J. Alison Auxter, Lathrop & Gage LC, 2345 Grand Boulevard, Suite
2800, Kansas City, MO 64108 Attorney for LATHROP & GAGE

S/Samuel K. Lipari
Samuel K. Lipari
3520 NE Akin Blvd. Apt. 918
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
Petitioner *pro se*