

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Docket No. 08–03115 (8th Cir.)

Appeal from

W.D. of Missouri Case No. 07-0849-CV-W-FJG

W.D. of Missouri Case No. 06-0573-CV-W-FJG

Jackson County Missouri 16th Circuit Court, Case No. 0616–cv–07421

SAMUEL K. LIPARI

(Individually and as Assignee of Dissolved
Medical Supply Chain, Inc.)

Appellant

**GENERAL ELECTRIC COMPANY, GENERAL ELECTRIC
CAPITAL BUSINESS ASSET FUNDING CORPORATION, GE
TRANSPORTATION SYSTEMS GLOBAL SIGNALING, LLC,
JEFFREY R. IMMELT, SEYFARTH SHAW LLP, STUART FOSTER,
HEARTLAND FINANCIAL GROUP, INC., CHRISTOPHER M.
MCDANIEL, BRADLEY J. SCHLOZMAN**

Appellees

Appeal from the United States District Court
for the Western District of Missouri
Hon. Judge Fernando J. Gaitan, Jr. presiding

REPLY BRIEF OF THE APPELLANT

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Oral argument requested.

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REPLY BRIEF OF APPELLANT

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and declines to file an optional reply brief suggestion memorandum for the following reasons:

The Appellees dispute the appellant's RICO Standing in error as an "intangible property interest" by asserting an impermissible heightened pleading standard for injury to business contrary to controlling Eighth Circuit precedent regarding a similar interest in *Regions Bank v. J.R. Oil Co., LLC*, 387 F.3d 721 at 729 (8th Cir., 2004) (Lipari Br. pg. 29) and *Bridge v. Phoenix Bond & Indemnity Co.*, 128 S.Ct. 2131 (2008). Schlozman expressly declines to address *Bridge v. Phoenix* (Schlozman Br. pg.38 fn. 22) and omits the tangible bank loan precedent under *Regions Bank*. Seyfarth Shaw LLP omitted *Bridge v. Phoenix* and *Regions Bank*. GE uses *Bridge v. Phoenix* only to misrepresent the plaintiff's fraud allegations *infra* and omits *Regions Bank*.

The appellees' argument that RICO conspiracy is insufficiently pled is based on their error over standing *supra* and does not address clearly established federal precedent in *Salinas v. United States*, 522 U.S. 52, 63, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997) ("There is no requirement of some overt act or specific act in the statute before us.") and the controlling law of this circuit under *U.S. v. Leisure*, 844 F.2d 1347 at 1367 (C.A.8 (Mo.), 1988). RICO co-conspirators need not have individually committed a predicate act. See Plaintiff's Response to Schlozman Motion to Dismiss at pgs.11- 13 (Doc. 58) and Plaintiff's Consolidated

Suggestion at pg. 18-22 (Doc.42). Schlozman does argue against the sufficiency of the association in fact RICO enterprise allegations, effectively refuted by the Appellant in Plaintiff's Response to Schlozman Motion to Dismiss at pgs. 8-11 (Doc.58) and Plaintiff's Consolidated Suggestion at pg. 22-27 (Doc.42), but Schlozman's brief does not address the RICO conspiracy liability.

The appellees do not appear to argue that the proposed amended complaint does not cure any pleading deficiencies of RICO conspiracy and tangible business injury proximately caused by the RICO conspiracy. The amended complaint pleading of Mail Fraud and Wire Fraud to the standard in *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07- 210 (U.S. 6/9/2008) by averring the injury of paid out money for contracts to provide the plaintiff- appellant business services that were being interfered with by the existing defendants' RICO conspiracy are recognizable business property injuries conferring standing on the plaintiff- appellant to prosecute the defendants for racketeering under the controlling precedent of this circuit in *Bennett v. Berg*, 685 F.2d 1053 at 1058 (C.A.8 (Mo.), 1981). See Liapri Br. pg. 39.

The GE defendants argue (GE br. pgs. 37,39,40, and42) that Jeffrey Immelt's misrepresentations (which the proposed amended complaint avers KPMG LLP also made) are not actionable fraud by omission. The amended complaint stated that on March 3, 2006 and February 20, 2008 KPMG fraudulently omitted from an SEC 10-K filing and a GE Annual report (both wire transmissions by SEC rule), the GE's contractual liability to conceal from the GE

Board of directors the financial obligations of the corporation to the appellant despite the duty to disclose under Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745. See Liapri Br. pg. 39. The first complaint at page 58 (Lipari Supp. Apdx. Vol.1 pg. 238) details Jeffrey Immelt's same SEC Report fraud on March 3, 2006 and the deception of GE's board of directors to prevent the company from honoring its real estate contracts with the appellant both meet the Mail and Wire Fraud pleading requirements under *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07- 210 (U.S. 6/9/2008). GE's arguments that the complaint failed to allege any reliance contradict *In re McClelland*, Case No. 06-41720 at fn 6 (Bankr. W.D. Mo. 6/20/2008); *Germain v. Howard*, No. 08-30364 at pg. 3 (5th Cir. 1/20/2009) (5th. Cir., 2009); *Chaz Concrete Company, LLC v. Codell*, No. 07-5870 at pg. 2-3 (6th Cir. 10/21/2008); and *City of New York v. Smokes-Spirits.Com, Inc.*, 541 F.3d 425 at fn 24 (2nd Cir., 2008)(“ *Phoenix Bond & Indem. Co.*, 128 S.Ct. at 2144. Here, there is no question that the City has alleged third-party reliance on the part of the State by alleging that defendants' failure to comply with the Jenkins Act caused the State to be unable to collect taxes. Thus, as we find that the City has adequately alleged proximate cause and third-party reliance,...”)

The appellees do not address the abuse of discretion by the trial court judge in not recusing himself, regardless of the appellees desire to overturn this court in *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004) making the earlier recusal part of the same matter or controversy as the present action,

preserving the timeliness of the plaintiff/appellant's § 455 motion (and the appellees did not seek the en banc panel required to reverse *Little Rock School District*). Under 28 U.S.C. § 455(b)(5), recusal is mandatory by this court's precedent in *U.S. v. Tucker*, 82 F.3d 1423 (C.A.8 (Ark.), 1996) referring to this court's rule regarding § 455 (a) disqualification in *U.S. v. Tucker*, 78 F.3d 1313 (C.A.8 (Ark.), 1996) and endorsing *Little Rock School District*. See Liapri Br. pg. 41.

Disturbingly, AUSA Jeffrey P. Ray and GE's John K. Power invite this court to participate in unlawful extrajudicial influence and to uphold the trial court's dismissal based on interim non-final judgments in other jurisdictions (some of which the record before this court proves were obtained through fraud). Doing so would create new causes of action against Schlozman and the GE defendants, but likely would also have this important national concern over artificial inflation of healthcare costs removed from Article III jurisdiction by Congress through direct nationalization or abandon self-regulation and require the federal government to implement and enforce regulations upon the healthcare supply industry by elimination of the Medicare anti-kickback safe harbor under Public Law 100-93 as foreseen in US House of Representatives Report 100-85 and for which testimony was heard by the US Senate Judiciary Committee's Sub-Committee on Antitrust Competition Policy and Consumer Rights on September 14, 2004 and March 15, 2006.

Since the proposed amended complaint sufficiently states RICO predicate acts committed subsequent to the first complaint by the proposed added defendants and conspiracy claims against all defendants and the appellees and trial court have not addressed co-conspirator liability, the parties properly belong in trial court.

Respectfully submitted,

S/ Samuel K. Lipari
Samuel K. Lipari

CERTIFICATE OF COMPLIANCE

Section 1. Word count

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this reply brief is proportionally spaced from the beginning of Brief of the Appellant at the statement of issues to the conclusion of the Prayer for Relief and contains 1075 words.

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/s/ Samuel K. Lipari
Samuel K. Lipari
Appellant pro se

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/s/ Samuel K. Lipari
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CERTIFICATE OF SERVICE

I certify I have sent a copy via email and US Mail to the undersigned and opposing counsel on 28th of January, 2009.

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