

## APPENDIX ONE

### Procedural History

1. Plaintiff, in the name of his Missouri corporation Medical Supply Chain, Inc. (“Medical Supply”) brought an action to enjoin possible conduct by the defendants and to declare rights of parties under the subject contracts between Medical Supply and US Bank, NA and US Bancorp, Inc. of this antitrust and tortious interference action in a federal action against US Bank and US Bancorp in the US District Court for Kansas in October 2002.
2. Medical Supply’s first action for injunctive and declaratory relief in the U.S. District Court for the District of Kansas was captioned *Medical Supply Chain, Inc. v. US Bancorp, NA et al* KS. Dist. Case No.: 02-2539
3. Medical Supply sought relief based on a complaint for an urgent temporary restraining order filed 10/22/02 and amended 11/02/02 because the defendants were causing US Bank and US Bancorp to repudiate a contract (misusing the USA PATRIOT Act shown to be a false pretext) on 10/15/02 to provide escrow accounts required for the deposit of \$350,000.00 raised from manufacturer rep candidates by Medical Supply.
4. The Hon. Carlos Murguia denied the temporary restraining order.
5. US Bank and US Bancorp’s later conduct breaking the contract caused all funds to be lost on 12/1/02, including the company’s last resources used to recruit the candidates and all funds invested in preparation of training of representatives to launch Medical Supply into the market for hospital supplies.
6. Medical Supply’s cause was controversial because it was an action to seek an injunction against breaking a contract to provide escrow accounts in furtherance of a boycott by US Bancorp and Piper Jaffray’s coconspirator identified in the complaint as Novation, LLC a healthcare group purchasing organization (“GPO”) competitor of Medical Supply’s in the hospital supply market.
7. Also identified in the complaint was Novation, LLC’s captive e-commerce marketplace Neoforma, Inc. directly competing with Medical Supply on the Internet.
8. Medical Supply sought an interlocutory appeal on the denial of injunctive relief without a memorandum and order or findings of law and fact *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 02-3443.

9. Medical Supply also sought interim pre-hearing relief in the Tenth Circuit seeking to prevent the defendants from filing a malicious USA PATRIOT Act Suspicious Activity Report that would destroy Medical Supply's ability to obtain escrow arrangements, higher level banking and international fund transfer services elsewhere to accomplish its capitalization and conduct hospital supply transactions.

10. Despite the loss of jurisdiction resulting from interlocutory appeal, Hon. Judge Carlos Murguia proceeded on with the action and to hear motions in trial court, ultimately dismissing the federal claims against the US Bancorp defendants and dismissing without prejudice the pendant state claims.

11. The dismissal of the US Bancorp defendants came as the petitioner was filing *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case number 03-2324-CM over subsequent conduct by US Bancorp's co-conspirators.

12. The pre-hearing relief opposed by US Bank and US Bancorp was denied and the interlocutory appeal was dismissed as moot due to Judge Carlos Murguia's dismissal of the underlying action against US Bancorp.

13. Medical Supply appealed the dismissal of its injunctive and declaratory relief action *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342.

14. The Hon. Judge Carlos Murguia dismissed the federal claims in the action against the GE defendants, overturning US Supreme Court controlling precedent that the antitrust co-conspirators need not be made defendants and where the petitioner had identified co-conspirators in the hospital supply cartel. The state law claims were dismissed without prejudice and are currently before the Western District of Missouri.

15. The Tenth Circuit upheld the trial court's dismissal without findings of law or fact and made a show cause order why Medical Supply and its counsel should not be sanctioned for a frivolous appeal.

16. Medical Supply answered the show cause order asserting the trial court had applied the incorrect legal standard for pleading antitrust claims and had misstated the USA PATRIOT Act.

17. After reviewing Medical Supply's reply to the show cause order, the Tenth Circuit found that Medical Supply had pled a conspiracy that included a separate legal entity, contradicting the trial court's ruling and the Tenth Circuit panel found that Medical Supply was correct in the existence of private rights of action under the USA PATRIOT Act.

18. Instead of the appellate panel correcting their ruling and ordering that Medical Supply was entitled to injunctive and declaratory relief, the Tenth Circuit panel ordered that Medical Supply's counsel receive the court's most serious sanction for a frivolous appeal.

19. Medical Supply sought *en banc* rehearing of its appeal, giving notice that the panel's ruling had no preclusive effect for the parties regarding the future action for monetary damages in the Western District of Missouri. Neither the court nor opposing counsel contradicted Medical Supply's ripeness analysis.

20. The Tenth Circuit court declined to rehear the case *en banc*.

21. 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 where the matter was styled *Medical Supply Chain, Inc. v. Novation, et al*, W.D. MO case no. 05-0210.

22. The case was transferred to the District of Kansas at Kansas City, Kansas and recaptioned as *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299.

23. The Hon. Judge Kathryn H. Vratil made no rulings in *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299 delaying the opportunity to obtain discovery on the defendants' participation in the wrongful disbarment of Medical Supply's counsel for almost a year.

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

25. 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.

26. The petitioner's case was then transferred to Kansas District Court Judge, Hon. Carlos Murguia who had heard the original action for a temporary restraining order and declaratory relief.

27. The Hon. Judge Carlos Murguia 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 US Bank and US Bancorp's law firm Shugart Thomson & Kilroy, P.C. authored a case 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 Clerk's office through Deputy Clerk Kerry Martinez 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 including the present Missouri state law antitrust claims, tortious interference with contract, fraud and prima facie tort.

33. The Kansas District court retained jurisdiction over the federal action to sanction Medical Supply's former counsel and the plaintiff Samuel K. Lipari for among other reasons, witnessing his

counsel's disbarment but then because of a timely motion for reconsideration by the plaintiff Samuel K. Lipari, Hon. Judge Carlos Murguia ruled Medical Supply Chain, Inc. would be sanctioned.

34. Medical Supply Chain, Inc. and Samuel K. Lipari as successor in interest gave notice of appeal of the federal court decision on September 8, 2006 and the plaintiff Samuel K. Lipari's federal law based claims over the injuries to his former corporation went before the Tenth Circuit Court of Appeals in *Medical Supply Chain, Inc. v. Novation, et al*, 10th Cir. case no. 06-3331.

35. The plaintiff Samuel K. Lipari undertook to bring the Missouri state law contract based claims as the sole assignee of his now dissolved Missouri corporation in this court acting *pro se* in an action that was captioned *Samuel Lipari v. US Bancorp, NA, et al*, 16<sup>th</sup> Cir Mo. Case no. 0616-CV32307.

36. US Bank and US Bancorp fraudulently removed the action to the US District Court for the District of Missouri asserting diversity but without disclosing to the Clerk of the Western District Court during the *ex parte* removal that the matter had been originally filed in the Western District as *Medical Supply Chain, Inc. v. Novation, et al*, W.D. MO case no. 05-0210 with Missouri resident codefendants.

37. US Bank and US Bancorp through their agent Shughart, Thomson, Kilroy, P.C. fraudulently had the Western District case transferred at US Bank and US Bancorp's false assertion of the interests of justice to the District of Kansas at Kansas City, Kansas where it was recaptioned as *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299 and dismissed by the Hon. Judge Carlos Murguia in response to extrinsic fraudulent dismissals filed by Shughart, Thomson, Kilroy, P.C. and Husch Blackwell Sanders LLP for not having pleading elements.

38. The pleading elements for the federal antitrust and racketeering claims were clearly on the face of the *Medical Supply Chain, Inc. v. Novation, et al* complaint and located where the table of contents identified them, exposing the extrinsic fraud on the Kansas District court.

39. US Bank and US Bancorp through their agent Shughart, Thomson, Kilroy, P.C. fraudulently withheld disclosure from the Clerk of the Western District of Missouri that *Samuel Lipari v. US Bancorp, NA, et al*, 16<sup>th</sup> Cir Mo. Case no. 0616-CV32307 was under exclusive federal jurisdiction in the US Court of Appeals for the Tenth Circuit as *Medical Supply Chain, Inc. v. Novation, et al*. 10th Cir. case no. 06-3331.

40. After removing the plaintiff's state law claims with the false assertion of federal diversity jurisdiction where the plaintiff's federal concurrent action was still under the jurisdiction of the Tenth

Circuit which was hearing the plaintiff's appeal, Shughart, Thomson, Kilroy, P.C. again falsely transferred the state action to the Kansas District court misrepresenting to US District Court for Western District of Missouri Hon. Judge Fernando J. Gaitan that the US Bank and US Bancorp sought the case moved in the "interests of justice."

41. The case continues on as *Samuel Lipari v. US Bancorp, NA, et al*, KS. Dist. Court Case No.

**42. XXXX insert here**

43. The Tenth Circuit was over ruled by the US Supreme Court on the impermissible heightened pleading standard appealed earlier by the plaintiff.

44. On February 13, 2008, the plaintiff filed a Rule 60 b Motion in the Tenth Circuit seeking to reopen *Medical Supply Chain, Inc. v. US Bancorp, NA, et al* 112 Fed. Appx. 730 (10th Cir. 2004) where the appellate court exercised original jurisdiction to sanction the plaintiff and the mandate rule prevents the trial court from altering the judgment.

45. On February 13, 2008, the plaintiff also filed a Rule 60 b Motion in the Kansas District Court seeking to reopen *Medical Supply Chain, Inc. v. Novation, et al*, KS Dist. Court case no.:05-2299 where the Tenth Circuit declined to assert jurisdiction over the appeal.